

AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICELIST

Special Item 532420L	Leasing of New Electronic Equipment
Special Item 33411	Purchase of New Electronic Equipment
Special Item 811212	Maintenance, Repair Services and/or Repair Parts/Spare Parts
Special Item 511210	Software Licenses
Special Item 54151	Software Maintenance Services
Special Item 518210C	Cloud and Cloud-Related IT Professional Services
Special Item 611420	Information Technology Training
Special Item 54151S	Information Technology Professional Services
Special Item NEW	Introduction of New Supplies and Services
Special Item OLM	Order-Level Materials (OLM)

SIN 5324200L - LEASING OF NEW ELECTRONIC EQUIPMENT

PSC Code W070 – LEASE-RENT OF ADP EQUIPMENT AND SUPPLIES

SIN 33411 PURCHASE OF NEW ELECTRONIC EQUIPMENT

PSC Code 7010 - SYSTEM CONFIGURATION

End User Computers/Desktop Computers
Professional Workstations
Servers
Laptop/Portable/Notebook Computers
Large Scale Computers
Optical and Imaging Systems
Other Systems Configuration Equipment, Not Elsewhere Classified

SIN 811212 - MAINTENANCE OF EQUIPMENT, REPAIR SERVICES, AND/OR REPAIR PARTS/SPARE PARTS

PSC Code J070 - MAINTENANCE AND REPAIR SERVICE)(REPAIR PARTS/SPARE PARTS - SEE FSC CLASS FOR BASIC EQUIPMENT)

Maintenance Service, Repair Service, Third Party Maintenance
Repair Parts/Spare Parts

SIN 511210 - SOFTWARE LICENSES

Includes both term and perpetual software licenses, and maintenance.

PSC Code 7030 - INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers
Operating System; Application; Electronic Commerce (EC); Utility; Communications;
Core Financial Management; Ancillary Financial Systems; and Special Physical, Visual,
Speech, and Hearing Aid Software
Microcomputers
Operating System; Application; Electronic Commerce (EC); Utility; Communications;
Core Financial Management; Ancillary Financial Systems; and Special Physical, Visual,
Speech, and Hearing Aid Software

SIN 54151 – SOFTWARE MAINTENANCE SERVICES

PCS Code J070 SOFTWARE MAINTENANCE SERVICES

Software maintenance services creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance services includes person-to-person communications regardless of the medium used to communicate: telephone support, online technical support, customized support, and/or technical expertise which are charged commercially.

SIN 518210C – CLOUD AND CLOUD-RELATED IT PROFESSIONAL SERVICES**PSC CODE D305 – ADP TELEPROCESSING AND TIMESHARING SERVICES**

Includes commercially available cloud computing services such as Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) and emerging cloud services. IT professional services that are focused on providing the types of services that support the Government's adoption of, migration to or governance/management of Cloud computing. Specific labor categories and/or fixed price solutions (e.g. migration services, etc.) that support activities associated with assessing Cloud solutions, refactoring workloads for Cloud solutions, migrating legacy or other systems to Cloud solutions, providing management/governance of Cloud solutions, DevOps, developing cloud native applications or other Cloud oriented activities.

SIN 611420 - INFORMATION TECHNOLOGY TRAINING

PSC CODE U012 - EDUCATION/TRAINING-INFORMATION TECHNOLOGY / TELECOMMUNICATIONS TRAINING

SIN 54154S - INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES

PSC Code D399 - OTHER INFORMATION TECHNOLOGY SERVICES, NOT ELSEWHERE CLASSIFIED IT Professional Services and/or labor categories for database planning and design; systems analysis, integration, and design; programming, conversion and implementation support; network services, data/records management, and testing.

Note1: IT professional services may only be resold in direct support of products that are authorized to be sold via the schedule contract.
Note 2: Contractor shall not provide services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services.

SIN NEW - Introduction of New Supplies and Services

Section I. PC as a Service. This outlines the common service features for Dell Marketing L.P.'s PC as a Service solution, which is comprised of a combination of hardware, software and services (both close-to-the-box and professional) aggregated into a financing solution which provides a single price per seat per month.

SIN OLM – ORDER-LEVEL MATERIALS (OLM)

OLMs are supplies and/or services acquired in direct support of an individual task or delivery order placed against a Schedule contract or BPA. OLM pricing is not established at the Schedule contract or BPA level, but at the order level. Since OLMs are identified and acquired at the order level, the ordering contracting officer (OCO) is responsible for making a fair and reasonable price determination for all OLMs.

Order-Level Materials (OLMs) are supplies and/or services acquired in direct support of an individual task or delivery order under the contract. OLMs are not defined, priced or awarded at the contract level.

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Federal Government Solutions
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Internet Address: <http://www.dell.com/fed>

Solicitation #47QSMD20R0001

Refresh 0001

Contract Number: GS-35F-059DA

Contract Period: November 20, 2015 to November 19, 2020 (1st Option)

General Services Administration

Federal Acquisition Service

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On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order¹ are available through GSA Advantage!®, a menu-driven database system. The internet address for GSA Advantage!® is: **GSAAdvantage.gov**. Please note that certain complex Dell products and / or configurations may not be available on Advantage due to its limitations.

Dell's GSA Terms and Conditions, as well as Dell's GSA product and pricing, are available on the Dell Federal Government Home Page at <https://www.delltechnologies.com/en-us/industry/federal/federal-government-it.htm#scroll=off>. On the Federal Home Page is a tool to identify Dell Sales Representatives responsible for individual Federal Agencies. If you know the name of your Sales Representative, address your Internet mail message to: firstname_lastname@dell.com

Given Dell's price list is a SKU-based price list containing over 300,000 SKUs, which per it's commercial practices change frequently, publishing and distribution of a hard copy price list is impractical. Upon request Dell will provide an electronic copy of the current price list. The Dell-specific Authorized Federal Supply Schedule Price List terms are available on the GSA *e-library*, or via email from Dell upon request.

¹ Please note that given the complexity of certain Dell product configurations, it may not be not possible to properly configure a system on Advantage! and/or configure a product without the assistance of a Dell Technical Account Manager. Please contact Dell directly.

INFORMATION FOR ORDERING ACTIVITIES

SPECIAL NOTICE TO AGENCIES:

Small Business Participation. SBA strongly supports the participation of small business concerns in GSA's Multiple Award Schedule (hereinafter "MAS") Program. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Multiple Award Schedule, and to report accomplishments against these goals.

For orders exceeding the micro-purchase threshold, FAR 8.404 requires agencies to consider the catalogs/price lists of at least three Schedule contractors or consider reasonably available information by using the GSA Advantage! On-line shopping service (<http://www.gsaadvantage.gov>). The catalogs/price lists, GSA Advantage! And the Federal Supply Service Home Page (www.gsa.gov) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting price lists for a best value determination.

For orders exceeding the micro-purchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

0. DEFINED TERMS

Throughout this Authorized Federal Supply Schedule Price List ("AFSSPL") (i) Dell Marketing L.P. may be referred to as "Dell" or "Contractor"; and (ii) this AFSSPL, GS-35F-059DA may be referred to as "Contract" or "FSS Contract."

1. ORDER QUANTITIES

The minimum dollar value of orders is \$100. There is no maximum order limit.

2. GEOGRAPHIC SCOPE OF CONTRACT

- a. The geographic scope of this Contract is worldwide.
- b. The terms and conditions of this Contract shall apply to all orders for delivery and maintenance of equipment in areas listed in the price list outside the 48 contiguous states, Hawaii, Alaska and the District of Columbia except for the following modifications:
 - i. In place of a delivery date, an estimated shipping date shall be specified on the order.
 - ii. Upon request of Dell, the Government, on a reimbursable basis, may provide Dell with logistics support, as available, in accordance with all applicable Government regulations. Such Government support will be provided on a reimbursable basis, and will only be provided to Dell's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this Contract.
- c. Outside of the U.S., Dell agrees to accept orders for maintenance (On-Site Service) of equipment where Dell maintains the capability of performing such maintenance. Some isolated locations may only be serviced through a "return to depot" process. As conditions are subject to change, ordering activities should check with their Dell Sales Representative.

3. POINTS OF PRODUCTION

Please refer to the Dell Marketing L.P. SAM registration (www.sam.gov, search under Dell's DUNS 877936518 in the Representations and Certifications section, FAR 52.212-6 Place of Performance) for the points of production for Dell-branded products. Generally, enterprise (e.g. servers, non-complex storage, workstations) and desktop products are sourced from Dell's ODM located in Mexico; notebook computers from Dell's ODM in Taiwan; complex storage products from the U.S. Please refer to the Foreign Items paragraph below.

4. DISCOUNTS AND PRICING

a. **PRICES.** Prices listed herein are net; Contract discounts have already been deducted and the GSA Industrial Funding Fee ("IFF") has been incorporated into the price, thus the IFF is not separately priced/invoiced.

b. Unless the ordering activity and Dell have agreed to a different discount, Dell's standard pricing policy for Dell-branded systems, which include both hardware and services in one discounted price, allocates the discount off list price applicable to the service portion of the system to be equal to the overall calculated percentage discount off list price on the entire system.

c. **SPECIAL PRICING.** Ordering activities are encouraged to compete their large requirements among GSA MAS holder contractors, and Schedule contractors are encouraged to quote lower "spot prices" for individual opportunities. The resulting competitive price may be included in a Delivery Order without triggering the Price Reduction clause. Special pricing may be available for large requirements. Please call the applicable Agency-specific telephone number listed above to discuss with your Sales Representative.

i. **MAXIMUM ORDER THRESHOLD**

(1) The Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:

532420L	Leasing of New Electronic Equipment
33411	Purchasing of New Electronic of Equipment
811212	Maintenance of Equipment, Repair Services, and/or Repair/Spare Parts
511210	Software Licenses
54151	Software Maintenance Services
518210C	Cloud and Cloud-Related IT Professional Services
54151S	Information Technology (IT) Professional Services

(2) The Maximum Order value for SIN 611420 Information Technology Training is \$25,000.

(3) The Maximum Order value for SIN NEW Introduction of New Supplies and Services is \$1,000,000.

(4) The Maximum Order value for SIN OLM Order Level Materials is \$100,000.

d. **GOVERNMENT EDUCATIONAL INSTITUTIONS:** Government Educational Institutions are offered the same discounts as all other Government customers.

5. PROMPT PAYMENT TERMS / PAYMENT TERMS

a. No prompt payment discounts are available.

b. Payment terms are Net 30 days from receipt of invoice or completion of acceptance, whichever is later – payment by check or EFT.

c. Dell accepts the Government purchase card for payments equal to or less than the micro-purchase threshold for oral or written delivery orders, provided billing is authorized at the time of shipment. Dell does not offer my additional discount for their use.

d. Dell accepts the Government purchase cards for payments above the micro-purchase threshold per with paragraph 7.d.ii., and provided billing is authorized at the time of shipment. Dell does not offer my additional discount for their use.

e. Advance or pre-payment is not authorized or allowed under this FSS Contract. (31 U.S.C. 3324).

6. FOREIGN ITEMS

The Country of Origin column on the Schedule's Excel price lists the county of origin two digit code. Please refer to the Country of Origin / Warranty Codes section of this AFSSLP for a key to the codes.

7. TRADE AGREEMENTS ACT OF 1979, AS AMENDED

Dell's information technology systems (IT Systems) (e.g., notebooks, desktops, workstations, servers, data storage equipment) comply with the Trade Agreements Act (TAA) as specified in FAR §52.225-5. Dell's IT Systems may include ancillary peripheral items that attach to the IT System (e.g., monitors, mice, keyboards, port replicators). These peripheral items may not comply with the TAA when sold alone, but will take on the TAA designation of the IT System with which the peripheral item is contemporaneously sold. Peripheral items not sold contemporaneously with an IT System will comply with the TAA on their own. Dell also provides replacement/spare parts for its IT Systems (e.g., HDDs, memory, SSDs, processors) that are integrated internally into the IT System. These replacement/spare parts may not comply with the TAA, but will take on the TAA designation of the IT System inside which that replacement/spare part will be integrated.

8. PRODUCT SUBSTITUTIONS

Dell may make product substitutions either to base systems, internal system components, options or external peripherals as long as the substitute item is the same or better technology at the same or lower price. Delivery order modifications will not be required. The invoice will reflect the actual product shipped NOT the product ordered. Notwithstanding the forgoing, if any change would impact (i) any customer software image, (ii) other such requirements such as ESTAR, EPEAT, etc.; or (iii) the order requires non-deviation/form-fit-function (specified at the time of quote request and called out clearly on the Order) product substitutions will not be made without the written approval of the ordering activity. In such instances Dell shall notify the ordering activity and request approval prior to making any such changes. If such changes are not acceptable to the ordering activity and Dell is unable to provide the product as originally quoted/ordered, the termination for convenience provisions of FAR 52.212-4 shall be invoked.

9. DELIVERY SCHEDULE

a. **TIME OF DELIVERY.** The Contractor shall deliver to CONUS destinations within the number of calendar days after receipt of order (ARO), as set forth below. Offerors shall insert in the "time of Delivery (days ARO)" column in the Schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal commercial practice, except where commercial Smart Select systems and/or non-Trade Agreement Act compliant products are being delivered. The Contractor shall ship orders to destinations OCONUS within the days ARO times specified below.

SIN	CONUS	OCONUS
532420L	5 – 120*	5 – 120*
34111	5 – 120*/**	5 – 120*
811212	5 – 120*	5 – 120*
51120	5 – 120*	5 – 120*
54151	5 – 120*	5 – 120*
518210C	5 – 120*	5 – 120*
61420	5 – 120*	5 – 120*
54151S	5 – 120*	5 – 120*
NEW	5 – 120*	5 – 120*
OLM	5 – 120*	5 – 120*

*Or as otherwise negotiated between the ordering activity and Dell Marketing L.P.

** Please refer to paragraph 8 in the SIN 33411 Section below for additional delivery options.

i. **EXPEDITED DELIVERY TIMES.** For those items that can be delivered quicker than the delivery times in paragraph (a), above, the offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested: As negotiated at the time of ordering activity request.

ii. **OVERNIGHT AND 2-DAY DELIVERY TIMES.** Ordering activities may require overnight or 2-day delivery, which is available within the U.S. only. Dell generally does not build hardware products to inventory; rather, Dell custom configures products as orders are received. Once the product is built, overnight or 2-day delivery is available for an expedite fee that is negotiated at the time of ordering activity request. Dell is

not required to provide, and the paying office shall not require, documentation to substantiate the fee for expedited delivery that Dell and the ordering activity have previously agreed upon.

iii. **INSIDE DELIVERY.** Ordering activities may require inside delivery. Inside delivery is available within the U.S. only. Additional charges, if any will be negotiated at the time of ordering activity request.

b. **URGENT REQUIREMENTS.** When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements for an ordering agency, agencies are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering agency, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the Contract.

10. FOB POINT

a. Within the continental U.S (CONUS) and the District of Columbia: Destination (three to five day ground delivery). Hawaii and Alaska: Destination (3rd day air).

b. Outside the U.S. (OCONUS): Deliveries via APO/FPO - Origin (i.e. the CONUS-located APO or FPO).

c. Other deliveries - as agreed between the ordering activity and Dell. Shipping charges will be separately quoted, and agreed upon between the ordering activity and Dell.

11. ORDERING ADDRESS

a. Dell Marketing L.P. / Federal
Round Rock 3 East, MS RR3-63
2300 Greenlawn
Round Rock, TX 78664-7090

Dell's GSA Terms and Conditions, as well as Dell's GSA product and pricing, are available on the Dell Federal Government Home Page at <https://www.delltechnologies.com/en-us/industry/federal/federal-government-it.htm#scroll=off>. On the Federal Home Page is a tool to identify Dell Sales Representatives responsible for individual Federal Agencies. If you know the name of your Sales Representative, address your Internet mail message to: `firstname_lastname@dell.com`

i. Orders may be placed electronically, by telephone or by mail. There must be a valid Dell quote number in order to place an order (except orders placed through GSA Advantage!) Ordering activities may obtain technical and/or ordering assistance at: Voice (855) 860-9606 / Fax (877) 416-4334.

ii. Dell Marketing L.P. is not currently participating in GSA's Cooperative Purchasing Program. However, at any one time there are approximately 20 MAS contractors who hold Dell GSA Letters of Supply and participate in Cooperative Purchasing. State and local government ordering activities may contact Dell's GSA Schedule Point of Contact listed on the GSA e-Library email the Dell Federal Reseller mailbox at `Fed_Reseller_Admin@dell.com` for additional information and a current list of Dell Letter of Supply holders.

b. ORDERING PROCEDURES FOR SUPPLIES AND SERVICES

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

i. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

ii. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

c. **CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES**

Any ordering activity, with respect to any one or more delivery orders placed by it under this Contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See 52.212-4).

d. **PURCHASE OF INCIDENTAL, NON-SCHEDULE ITEMS**

i. Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this Contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

ii. Open market items shall be clearly labeled on the order as such.

iii. All clauses applicable to items not on the FSS contract must be included in the order.

12. PAYMENT ADDRESSES

Standard Remittance Address:

Dell Marketing L.P.
C/O Dell USA L.P.
P.O. Box 676265
Dallas, TX 75267-6265

Overnight Mail Remittance Address:

Dell Marketing L.P.
C/O Dell USA L.P.
Box 676265
1200 East Campbell Rd, Suite 108
Richardson, TX 75081

Electronic Payment Address

Payee/Company Information

Dell Marketing L.P.
C/O Dell USA L.P.
1 Dell Way Box 8730
Round Rock, TX 78682
Tax ID: 74-2616805

Financial Institution Information

PNC Bank
500 First Avenue
Pittsburgh, PA 15222

Beneficiary Name: Dell Marketing L.P.
c/o Dell USA L.P.

Bank Contact: 800-762-4224

****All Electronic Fund Transfers (EFT) must use the CTX format for the invoice to be processed accurately and timely.**

13. WARRANTY PROVISIONS

a. For the purpose of this Contract, warranties include, in addition to those agreed for the entire schedule Contract:

i. Time of delivery/installation quotations for individual orders;

ii. Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/service/software package submitted in response to requirements which results in orders under this schedule contract.

iii. Any representations and/or warranties made concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above list does not encompass items not currently covered by the FSS Contract.

c. Please refer to the warranty provisions within the SIN-specific sections below.

14. EXPORT PACKAGING CHARGES

Export packing is available. In the event export requires additional packaging beyond Dell's standard commercial packaging, such packaging may require an additional charge. If such a charge is required, it will be separately quoted on an open market basis and will be listed as an open market line item on the Delivery Order.

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15. SECTION 508 COMPLIANCE

General information regarding Section 508 compliance on the supplies and services in this Contract is available in Electronic and Information Technology (EIT) at: <http://www.section508.gov/>

Dell maintains a library of Section 508 Voluntary Product Accessibility Templates (VPATS) detailing how individual products meet the requirements of Section 508. Dell's VPATS, as well as other related information may be found at: <http://www.dell.com/learn/us/en/uscorp1/vpat>. Additional information is also available from your Dell Sales Representative.

16. DUNS AND OTHER STATISTICAL DATA FOR ORDERING ACTIVITY COMPLETION OF SF 279

Data Universal Numbering System (DUNS) Number: **877936518**

Business Size: Large Business

Woman-Owned Small Business: No

Tax Identification Number (TIN): **74-2616805**

Veteran Owned Small Business (VOSB): No

CAGE Code: 3DMD3

17. SYSTEM FOR AWARD MANAGEMENT (SAM)

Dell Marketing L.P.'s SAM registration is current, accurate and complete.

18. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003)

a. **SECURITY CLEARANCES:** The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this Contract. As Dell Marketing L.P. does not hold a U.S. Government Facility Security Clearance ("FSC"), in event clearances are required, the Contractor will establish a GSA Contactor Teaming Agreement with its affiliate Dell Federal Systems L.P., which holds a GSA MAS, number GS-35F-0884P). All costs associated with providing individuals who possess the appropriated level of security clearance will be negotiated with the ordering activity on an individual task/delivery order basis.

b. **TRAVEL:** The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.

c. **CERTIFICATIONS, LICENSES AND ACCREDITATIONS:** As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.

d. **INSURANCE:** As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

e. **PERSONNEL:** The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this Contract. Ordering activities may require agency approval of additions or replacements to key personnel.

f. **ORGANIZATIONAL CONFLICTS OF INTEREST:** Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5, in the event a mitigation plan is unable to be agreed upon between the order activity and the Contractor.

g. **DOCUMENTATION/STANDARDS:** The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.

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h. **DATA/DELIVERABLE REQUIREMENTS:** Any required data/deliverables at the ordering level will be as specified or negotiated in the ordering activity's order.

i. **GOVERNMENT-FURNISHED PROPERTY:** As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary. Contractor does not maintain a Government approved property management system.

j. **AVAILABILITY OF FUNDS:** Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the Contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer. It is at the Contractor's sole discretion whether to accept an order(s) where funds are not yet available.

19. BLANKET PURCHASE AGREEMENT (BPAs)

Subject to FAR 8.405-3, establishment of BPAs under this FSS Contract to fill repetitive needs for supplies or services is allowable.

20. CONTRACTOR TEAM ARRANGEMENTS

a. Dell participates in contractor team arrangements (CTA), consistent with the GSA guidance at <http://www.gsa.gov/portal/content/200553>. During the solicitation phase of a GSA procurement, where Dell may be bidding as a CTA Team Member with multiple competing Team Leads, contingent upon the ordering activity's approval, a Letter of Intent to Team with each Lead is acceptable in lieu negotiation multiple CTAs, only to have all but one cancelled.

b. Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with contract clause 552.238-80, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

21. INSTALLATION, DEINSTALLATION, REINSTALLATION

a. The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services.

b. Dell is unable to accept task orders subject to the Davis Bacon Act; compliance may be possible through a CTA where Dell is a Team Member. The ordering activity issuing the task order against this FSS Contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, de-installation, and reinstallation services under SIN 33411.

22. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)

a. Dell shall, at its own expense, provide and maintain during the entire performance of this FSS Contract, at least the kinds and minimum amounts of insurance required herein.

b. If requested by the ordering activity, before commencing work hereunder, Dell shall notify the Contracting Officer in writing that the required insurance has been obtained, and provide a Certificate of Insurance if so desired. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

- i. For such period as the laws of the State in which this Contract is to be performed prescribe; or
- ii. Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

23. LIABILITY FOR INJURY OR DAMAGE

Dell shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Contractor's gross negligence; or (2) for fraud.

24. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATIONS STANDARDS REQUIREMENTS

Ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be directed to Dell.

a. **FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):** Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

b. **FEDERAL TELECOMMUNICATIONS STANDARDS (FED-STDS):** Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, NIST, Gaithersburg, MD 20899, telephone number (301)975-2833.

**TERMS AND CONDITIONS APPLICABLE TO LEASING OF NEW ELECTRONIC EQUIPMENT
(SPECIAL ITEM NUMBER 532420L)²**

LEASE TYPES

The ordering activity will consider proposals for the following lease types:

- a. Lease to Ownership;
- b. Lease with Option to Own; and
- c. Step Lease.

Orders for leased products must specify the leasing type.

OPTION 1

1. STATEMENT

a. It is understood by all parties to this Contract that orders issued under this SIN shall constitute a lease arrangement. Unless the ordering activity intends to obligate other than annual appropriations to fund the lease, the base period of the lease is from the date of the product acceptance through September 30 of the fiscal year in which the order is placed.

b. Agencies are advised to follow the guidance provided in Federal Acquisition Regulation (FAR) Subpart 7.4 Product Lease or Purchase and OMB Circular A-11. Agencies are responsible for the obligation of funding consistent with all applicable legal principles when entering into any lease arrangement.

2. FUNDING AND PERIODS OF LEASING ARRANGEMENTS

- a. Annual Funding. When annually appropriated funds are cited on an order for leasing, the following applies:
 - i. The base period of an order for any lease executed by the ordering activity shall be for the duration of the fiscal year. All ordering activity renewal options under the lease shall be specified in the delivery order. All orders for leasing shall remain in effect through September 30 of the fiscal year or the planned expiration date of the lease, whichever is earlier, unless the ordering activity exercises its rights hereunder to acquire title to the product prior to the planned expiration date or unless the ordering activity exercises its right to terminate under FAR 52.212-4. Orders under the lease shall not be deemed to obligate succeeding fiscal year's funds or to otherwise commit the ordering activity to a renewal.
 - ii. All orders for leasing shall automatically terminate on September 30, unless the ordering activity notifies the Contractor in writing thirty (30) calendar days prior to the expiration of such orders of the ordering activity's intent to renew. Such notice to renew shall not bind the ordering activity. The ordering activity has the option to renew each year at the original rate in effect at the time the order is placed. This rate applies for the duration of the order. If the ordering activity exercises its option to renew, the renewal order, shall be issued within 15 days after funds become available for obligation by the ordering activity, or as specified in the initial order. No termination fees shall apply if the ordering activity does not exercise an option.

b. Crossing Fiscal Years Within Contract Period. Where an ordering activity has specific authority to cross fiscal years with annual appropriations, the ordering activity may place an order under this option to lease product for a period up to the expiration of its period of appropriation availability, or twelve months, whichever occurs later, notwithstanding the intervening fiscal years.

3. DISCONTINUANCE AND TERMINATION

Notwithstanding any other provision relating to this SIN, the ordering activity may terminate products leased under this agreement, at any time during a fiscal year in accordance with the termination provisions contained in FAR

² Dell proposes additional optional terms and conditions for billings, payments, and/or invoices, consistent with terms and conditions specified in Appendix D Supplemental Leasing Provisions.

52.212-4. (l) Termination for the ordering activity's convenience, or (m) Termination for cause. Additionally, no termination for cost or fees shall be charged for non-renewal of an option.

OPTION 2

Option 2 Lease Terms and Conditions contains a cancellation clause, in which the fee must be in accordance with applicable legal principles.

To the extent an Offeror wishes to propose alternative lease terms and conditions that provide for lower discounts/prices based on the ordering activity's stated intent to fulfill the projected term of a lease including option years, while at the same time including separate charges for early end of the lease, the following terms apply. These terms address the timing and extent of the ordering activity's financial obligation including any potential charges for early end of the lease.

52.207-5	Option to Purchase Equipment	Feb 1995
52.227-14	Rights in Data-General	May 2014

1. LEASING PRICE LIST NOTICE

Contractors must include the following notice in their contract price list for SIN 532420L:
“The ordering activity is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the lease terms and conditions contained in this price list prior to ordering and obligating funding for a lease.”

2. STATEMENT OF ORDERING ACTIVITY INTENT

- a. The ordering activity and the Contractor understand that a delivery order issued pursuant to this SIN is a lease arrangement and contemplates the use of the product for the term of the lease specified in such delivery order (the “Lease Term”). In that regard, the ordering Activity, as lessee, understands that the lease provisions contained herein and the rate established for the delivery order are premised on the ordering Activity's intent to fulfill that agreement, including acquiring products for the period of time specified in the order. Each lease hereunder shall be initiated by a delivery order which shall, either through a statement of work or other attachment, specify the product being leased, and the required terms of the transaction.
- b. Each ordering activity placing a delivery order under the terms of this option intends to exercise each renewal option and to extend the lease until completion of the Lease Term so long as the need of the ordering activity for the product or functionally similar product continues to exist and funds are appropriated. Contractor may request information from the ordering activity concerning the essential use of the products.

3. LEASE TERM

- a. The date on which the ordering activity accepts the products is the Commencement Date of the lease. For acceptance to occur, the products must operate in accordance with the product's published specifications and statement of work. Acceptance shall be in accordance with the terms of the contract or as otherwise negotiated by the ordering activity and the Contractor.
- b. Any lease is executed by the ordering activity on the basis that the known requirement for such product exceeds the initial base period of the delivery order, which is typically 12 months, or for the remainder of the fiscal year. Pursuant to FAR and/or DFAR 232.703--3(b), delivery orders with options to renew that are funded by annual (fiscal year) appropriations may provide for initial base periods and option periods that cross fiscal years as long as the initial base period or each option period does not exceed a 12 month period. This cross fiscal year authority does not apply to multi-year leases.



c. The total Lease Term will be specified in each delivery order, including any relevant renewal options of the ordering activity. All delivery orders, whether for the initial base period or renewal period, shall remain in effect through September 30 of the fiscal year (unless extended by statute), through any earlier expiration date specified in the delivery order, or until the ordering activity exercises its rights hereunder to acquire title to the product prior to such expiration date. The ordering activity, at its discretion, may exercise each option to extend the term of the lease through the lease term. Renewal delivery orders shall not be issued for less than all of the product and/or software set forth in the original delivery order. Delivery orders under this SIN shall not be deemed to obligate succeeding fiscal year funds. The ordering activity shall provide the Contractor with written notice of exercise of each renewal option as soon as practicable. Notice requirements may be negotiated on an order-by-order basis.

d. Where an ordering activity's specific appropriation or procurement authority provides for contracting beyond the fiscal year period, the ordering activity may place a delivery order for a period up to the expiration of the Lease Term, or to the expiration of the period of availability of the multi-year appropriation, or whatever is appropriate under the applicable circumstances.

4. LEASE TERMINATION

a. The ordering activity must elect the Lease Term of the relevant delivery order. The Contractor (and assignee, if any) will rely on the ordering activity's representation of its intent to fulfill the full Lease Term to determine the monthly lease payments calculated herein.

- i. The ordering activity may terminate or not renew leases under this option at no cost, pursuant to a Termination for Non-Appropriation as defined herein (see paragraph (c) below). In any other event, the ordering activity's contracting officer may either terminate the relevant delivery order for cause or Termination for Convenience in accordance with GSAR 552.212-4 paragraphs (l) and (m).
- ii. The Termination for Convenience at the end of a fiscal year allows for separate charges for the early end of the lease (see paragraph (d) below). In the event of termination for the convenience of the ordering activity, the ordering activity may be liable only up to the amount beyond the order's Termination Ceiling. Any termination charges calculated under the Termination for Convenience clause must be determined or identified in the delivery order or in the lease agreement.

b. Termination for Convenience of the Ordering Activity: Leases entered into under this option may not be terminated except by the ordering activity's contracting officer responsible for the delivery order in accordance with GSAR 552.212-4, Contract Terms and Conditions-Commercial Items, paragraph (l), *Termination for Convenience of the ordering activity*. The costs charged to the ordering activity as the result of any Termination for Convenience of the ordering activity must be reasonable and may not exceed the sum of the fiscal year's payment obligations less payments made to date of termination plus the Termination Ceiling.

c. Termination for Non-Appropriation: The ordering activity reasonably believes that the bona fide need will exist for the entire Lease Term and corresponding funds in an amount sufficient to make all payments for the lease Term will be available to the ordering activity. Therefore, it is unlikely that leases entered into under this option will terminate prior to the full Lease Term. Nevertheless, the ordering activity's contracting officer may terminate or not renew leases at the end of any initial base period or option period under this paragraph if (a) it no longer has a bona fide need for the product or functionally similar product; or (b) there is a continuing need, but adequate funds have not been made available to the ordering activity in an amount sufficient to continue to make the lease payments. If this occurs, the ordering activity will promptly notify the Contractor, and the product lease will be terminated at the end of the last fiscal year for which funds were appropriated. Substantiation to support a termination for non-appropriation shall be provided to the Contractor upon request.

d. Termination Charges: At the initiation of the lease, termination ceilings will be established for each year of the lease term. The termination ceiling is a limit on the amount that a Contractor may be paid by the ordering activity on the Termination for Convenience of a lease. No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of termination. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the ordering activity received for the work performed based

upon the shorter lease term. No Termination for Convenience costs will be associated with the expiration of the lease term.

e. At the order level, the ordering activity may, consistent with legal principles, negotiate lower monthly payments or rates based upon appropriate changes to the termination conditions in this section.

LEASE PROVISIONS COMMON TO ALL TYPES OF LEASE AGREEMENTS

The following terms and conditions are applicable to any lease awarded under this Contract regardless of type or Option.

1. ORDERING PROCEDURES

a. When an ordering activity expresses an interest in leasing a product(s), the ordering activity will provide the following information to the prospective Contractor:

- i. Which product(s) is (are) required.
- ii. The required delivery date.
- iii. The proposed lease plan and term of the lease.
- iv. Where the product will be located.
- v. Description of the intended use of the product.
- vi. Source and type of appropriations to be used.

b. The Contractor will respond with:

- i. Whether the Contractor can provide the required product.
- ii. The estimated residual value of the product (Lease with Option to Own and Step Lease only).
- iii. The monthly payment based on the rate.
- iv. The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.
- v. A confirmation of the availability of the product on the required delivery date.
- vi. Extent of warranty coverage, if any, of the leased products.
- vii. The length of time the quote is valid.

c. The ordering activity may issue a delivery order to the Contractor based on the information set forth in the Contractor's quote. In the event that the ordering activity does not issued a delivery order within the validity period stated in the Contractor's quote letter, the quote shall expire.

2. ASSIGNMENT OF CLAIMS

GSAR 552.232-23, Assignment of Claims, is incorporated herein by reference as part of these lease provisions. The ordering activity's contracting officer will acknowledge the assignment of claim for a lease in accordance with FAR 32.804-5. The extent of the assignee's protection is in accordance with FAR 32.804. Any setoff provision must be in accordance with FAR 32.803.

3. PEACEFUL POSSESSION AND UNRESTRICTED USE

In recognition of the types of products available for lease and the potential adverse impact to the ordering activity's mission, the ordering activity's quiet and peaceful possession and unrestricted use of the product shall not be disturbed in the event the product is sold by the Contractor, or in the event of bankruptcy of the Contractor, corporate dissolution of the Contractor, or other event. The product shall remain in the possession of the ordering activity until the expiration of the lease. Any assignment, sale, bankruptcy, or other transfer of the leased product by the Contractor will not relieve the Contractor of its obligations to the ordering activity, and will not change the ordering activity's duties or increase the burdens or risks imposed on the ordering activity.

4. COMMENCEMENT OF LEASE

The date on which the ordering activity accepts the products is the Commencement Date of the lease. Acceptance is as defined elsewhere in the Contract, or as further specified in the order.

5. INSTALLATION AND MAINTENANCE

a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the ordering activity to obtain installation and maintenance services from a qualified source. The ordering activity may obtain installation and/or maintenance on the open market, from the Contractor's schedule Contract, or from other sources. The ordering activity may also perform installation and/or maintenance in house, if qualified resources exist. In any event, it is the responsibility of the ordering activity to ensure that maintenance is in effect for the Lease term for all products leased.

b. When installation and/or maintenance are ordered under this schedule to be performed by the Contractor, the payments, terms and conditions as stated in this Contract apply. The rates and terms and conditions in effect at the time the order is issued shall apply during any subsequent renewal period of the lease. The maintenance rates and terms and conditions may be added to the lease payments with mutual agreement of the parties.

6. MONTHLY PAYMENTS

a. Prior to the placement of an order under this Special Item Number, the ordering activity and the Contractor must agree on a "base value" for the products to be leased. For Lease to Ownership (Capital Lease) the base value will be the Contract purchase price (less any discounts). For Lease with Option to Own (Operating Lease), the base value will be the Contract purchase price (less any discounts), less a mutually agreed upon residual value (pre-stated purchase option price at the conclusion of the lease) for the products. The residual value will be used in the calculation of the original lease payment, lease extension payments, and the purchase option price.

b. To determine the initial lease term payment, the Contractor agrees to apply the negotiated lease factor to the agreed upon base value: For delivery orders placed under this SIN 532420L, whether under Option 1 or Option 2, Dell offers the following lease pricing:

- i. Pricing shall be calculated at an interest rate consisting of 400 basis points plus the Treasury constant maturity equal to the original lease term as shown in the Federal Reserve statistical release H.15 as of the preceding date closest to the date of the Lease Quote letter.
- ii. For Example: Lease factor one (1) percent over the rate for the three year (or other term) Treasury Bill (T-bill) at the most current U. S. Treasury auction.

The lease payment may be calculated by using a programmed business calculator or by using "rate" functions provided in commercial computer spreadsheets (e.g., Lotus 1-2-3, Excel).

c. For any lease extension, the extension lease payment will be based on the original residual value, in lieu of the purchase price. The ordering activity and the Contractor shall agree on a new residual value based on the estimated fair market price at the end of the extension. The formula to determine the lease payment will be that in 6.b. above.

d. The purchase option price will be the fair market value of the product or payment will be based upon the unamortized principle, as shown on the payment schedule as of the last payment prior to date of transfer of ownership, whichever is less.

NOTE: At the order level, ordering activity may elect to obtain a lower rate for the lease by setting the purchase option price as either, the fair market value of the product or unamortized principle. The methodology for determining lump sum payments may be identified in the pricelist.

e. The point in time when monthly rates are established is subject to negotiation and evaluation at the order level. In the event the ordering activity desires, at any time, to acquire title to product leased hereunder, the ordering activity may make a one-time lump sum payment.

7. LEASE END/DISCONTINUANCE OPTIONS

a. Upon the expiration of the Lease Term, Termination for Convenience, or Termination for Non-Appropriation, the ordering activity will return the Product to the Contractor unless the ordering activity by 30 days written notice elects either:

- i. to purchase the product for the residual value of the product, or
- ii. to extend the term of the Lease, as mutually agreed. To compute the lease payment, the residual value from the preceding lease shall be the initial value of the leased product. A new residual value shall be negotiated for the extended lease and new lease payments shall be computed.

b. Relocation - The ordering activity may relocate products to another location within the ordering activity with prior written notice. No other transfer, including sublease, is permitted. Ordering activity shall not assign, transfer or otherwise dispose of any products, or any interest therein, or create or suffer any levy, lien or encumbrance then except those created for the benefit of Contractor or its assigns.

c. Returns:

- i. Within fourteen (14) days after the date of expiration, non-renewal or termination of a lease, the ordering activity shall, at its own risk and expense, have the products packed for shipment in accordance with manufacturer's specifications and return the products to Contractor at the location specified by Contractor in the continental US, in the same condition as when delivered, ordinary wear and tear excepted. Any expenses necessary to return the products to good working order shall be at ordering activity's expense.
- ii. The Contractor shall conduct a timely inspection of the returned products and within 45 days of the return, assert a claim if their condition product exceeds normal wear and tear.
- iii. Product will be returned in accordance with the terms of the Contract and in accordance with Contractor instruction.
- iv. With respect to software, the ordering activity shall state in writing to the Contractor that it has:
 - (1) deleted or disabled all files and copies of the software from the equipment on which it was installed;
 - (2) returned all software documentation, training manuals, and physical media on which the software was delivered; and
 - (3) has no ability to use the returned software.

8. UPGRADES AND ADDITIONS

a. The ordering activity may affix or install any accessory, addition, upgrade, product or device on the product ("additions") provided that such additions:

- i. can be removed without causing material damage to the product;
- ii. do not reduce the value of the product; and

- iii. are obtained from or approved by the Contractor, and are not subject to the interest of any third party other than the Contractor.
- b. Any other additions may not be installed without the Contractor's prior written consent. At the end of the lease term, the ordering activity shall remove any additions which:
 - i. were not leased from the Contractor, and
 - ii. are readily removable without causing material damage or impairment of the intended function, use, or value of the product, and restore the product to its original configuration.
- c. Any additions that are not so removable will become the Contractor's property (lien free).
- d. Leases of additions and upgrades must be co-terminus with that of the product.

9. RISK OF LOSS OR DAMAGE

The ordering activity is relieved from all risk of loss or damage to the product during periods of transportation, installation, and during the entire time the product is in possession of the ordering activity, except when loss or damage is due to the fault or negligence of the ordering activity. The ordering activity shall assume risk of loss or damage to the product during relocation, (i.e., moving the product from one ordering activity location to another ordering activity location), unless the Contractor shall undertake such relocation.

10. TITLE

During the lease term, product shall always remain the property of the Contractor. The ordering activity shall have no property right or interest in the product except as provided in this leasing agreement and shall hold the product subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The ordering activity shall have no right or interest in the software and related documentation except as provided in the license and the lease. Upon the Commencement Date of the Lease Term, the ordering activity shall have an encumbered license to use the software for the Lease Term. The ordering activity's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the ordering activity will not have an unencumbered, paid-up license until it has made all lease payments for the full Lease Term in the case of an Lease To Ownership or has otherwise paid the applicable purchase option price.

11. TAXES

The lease payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the Contract or sales price of the product furnished hereunder. The ordering activity will be invoiced for any such taxes as Contractor receives such tax notices or assessments from the applicable local taxing authority. Pursuant to the provisions of FAR 52.229-1 (Deviation – May 2003), State and Local Taxes, the ordering activity agrees to pay tax or provide evidence necessary to support an exemption from the tax.

12. OPTION TO PURCHASE EQUIPMENT (FEB 1995) (FAR 52.207-5)

- a. The Government may purchase the equipment provided on a lease or rental basis under this Contract. The contracting officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the Contract, including any extensions.
- b. Except for final payment and transfer of title to the Government, the lease or rental portion of the Contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.
- c. The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the Contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this Contract.

d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be “continuous rental.”

OPTIONAL SUPPLEMENTAL LEASE TERMS

Please refer to Appendix D, Optional Supplemental Lease Terms, for additional terms that, if adopted, may decrease the lease rate.

TERMS AND CONDITIONS APPLICABLE TO PURCHASING OF NEW ELECTRONIC EQUIPMENT (SPECIAL ITEM NUMBER 33411)
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1. MATERIAL AND WORKMANSHIP

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER

Written orders, GSA Advantage! orders, internet orders (via dell.com/federal), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this Contract. If time of delivery extends beyond the expiration date of the Contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order. Written orders, GSA Advantage! orders, internet orders, credit card orders or, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT

FOB Destination: Prices cover equipment delivery to destinations in the United States, Hawaii, Alaska and the District of Columbia using three to five day ground transportation.

Shipping charges may apply to other OCONUS locations. The Contractor will separately quote OCONUS shipping charges; the agreed upon charges will be included on the delivery order. Contractor's ability to ship a product via APO/FPO is dependent upon the size and weight of the product. Given that product sizes and weights vary with configuration and model, and APO/FPO requirements are subject to change, ordering activities desiring to ship via APO/FPO should contact their Dell Sales Representative to confirm if the product they are interested in purchasing may be shipped via this method. In general, Dell notebook and desktop computers, flat-panel monitors, and software & peripheral products may be shipped via APO/FPO; Dell workstations, servers and data storage products may not be able to be shipped via APO/FPO. Please note that shipping via US Postal Service to an APO/FPO address can take up to 8 weeks to deliver with no tracking available while in route to the destination.

4. INSTALLATION AND TECHNICAL SERVICES

a. **INSTALLATION.** Ordering activities may install ordered equipment themselves or order this service from Dell at the prices listed in the price list. Generally, ordering activities may install Government (i.e. desktop, notebook and workstation systems, as well third-party software and peripheral items) products and certain enterprise (i.e. server and storage products); more complex enterprise products may require Contractor installation. Any Contractor travel required in the performance of Installation Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

b. **CUSTOM FACTORY INTEGRATION SERVICES.** In addition to services specifically tied to its computer systems (e.g. warranty break fix, installation, asset recovery), Dell offers Custom Factory Intergration Services ("CFI" or "CFS"). These are services directly associated with the IT hardware requested by the customer, that are unique to the customer. Examples of CFI include, but are not limited to customer-specific image loading, non-Dell-standard peripheral/component integration and/or "drop-in-the-box," non-Dell-SKU'd component integration, application of UID/Rfid tags, merge center services (e.g. order consolodation), etc. While standard CFI, e.g. an asset tag or a UID tag are on the GSA Price List, customer-unique services are not added (but are available for purchase under the Contract) since only the customer for whom they are for may order them. Customer-specific custom SKUs are developed and exist for the term of the order, then retired. Pricing is negotiated between the ordering activity and Dell, with the Contract discount applied.

c. **INSTALLATION, DEINSTALLATION, REINSTALLATION.** The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive

less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply.

The ordering activity issuing the task order against this Contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, de-installation, and reinstallation services under SIN 33411.

d. **OPERATING AND MAINTENANCE MANUALS.** The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided, in electronic format, loaded on the equipment being purchased.

5. INSPECTION/ACCEPTANCE AND RETURN POLICY

a. **INSPECTION.** The Contractor shall only tender for acceptance those items that conform to the requirements of this Contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in Contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

b. **ACCEPTANCE.** Except for shipments via APO/FPO, acceptance shall occur on the first day after delivery of the product to the Government. For shipments via APO/FPO, acceptance shall occur on the first day after delivery to the Army or Fleet Post Office (i.e. the FOB point).

c. **RETURNS POLICY.** The Government may return Dell-branded products to Dell up to 30 days from the day they are delivered. **This policy does not apply to certain Dell branded products, as further outlined on the link below.** Please refer to subsection 2.d. of the SINs 511210 and 54151 section of this AFSSPL for the software returns policy. Specific return instructions may be found at:

<http://www.dell.com/learn/us/en/uscorp1/terms-of-sale-commercial-and-public-sector-returns>

6. WARRANTY FOR DELL PRODUCT

a. For all products, the Contractor will furnish all maintenance, machine adjustments, repairs and parts at the Government location for a period of three years from the date of shipment. The on-site guarantee covers the base system and any factory installed options offered under this Contract, except consumable items such as notebook batteries, which come with a one year replacement (exchange) service offering. Warranties for other Dell-branded peripheral products, spare parts and customer kits vary. Please refer to the "*How long does this limited hardware warranty last?*" section of Dell's limited warranty which may be found on the link immediately below. Dell reserves the right to replace, as a whole unit, monitors, keyboards and mice if an online technician determines that the unit is defective. Monitors purchased under this Contract are also covered under the base system guarantee. The terms and conditions of Dell's limited three-year warranty are loaded on each Dell system and may be found at:

<http://www.dell.com/learn/us/en/uscorp1/terms-of-sale-commercial-and-public-sector-warranties>

In addition, addition warranty terms covering Dell EMC branded products are available on this link. These warranties, as applicable, effective as of the date of this AFSSPL, are included as Appendix E. These are Dell Technologies Inc.'s U.S. warranties applicable to all U.S. Commercial and Public Sector sales (separate warranties are applicable to Consumer sales), and are subject to change from time to time at Dell Technologies Inc.'s sole discretion. As authorized by GSAR 552.212-4(w)(vi), Dell may unilaterally revise commercial supplier agreement terms provided such revisions are not material (as defined in the clause).

If your product fails during the warranty period and the troubleshooting suggestions in the product documentation do not solve the problem, you can receive support by contacting the Contractor via telephone, email or chat. The Support homepage may be found at: <http://www.dell.com/support/home/us/en/555?c=us&l=en&s=biz>

b. Next business day service listed in the price pages applies to the continental U.S., the District of Columbia, and to Alaska, and Hawaii within the specified service locations. OCONUS service requires purchase of warranty uplift options necessary for supporting such locations. Please refer to the Service Contract provided approximately 30 days after product delivery for a complete description of the services available.

c. OCONUS service SLA's, availability and uplift options are available online at:

<http://www.dell.com/learn/us/en/04/fed/oconus-program>

d. Additional warranty support services for critical infrastructure are available for an additional charge, many of which may be location-dependent, including 2 and 4 hour response time, ProSupport and ProSupport Flex. Please contact your Dell Inside Sales Representative, Dell Account Executive, or GSA POC for additional information.

e. All parts replaced during the warranty period shall become the property of the Contractor, unless the ordering activity has procured an additional service such as "Keep Your Own Hard Drive."

f. Prior to the expiration of the warranty period, whenever equipment is shipped for repair or mechanical replacement purposes, the Contractor shall bear all costs, including, but not limited to, costs of packing, transportation, rigging, drayage, and insurance. This warranty shall apply to the replacement machine from the date of its acceptance.

g. When equipment is returned to the Contractor's establishment for repairs, the Contractor shall be responsible for any damage or loss from the time the equipment is removed from the Government installation until the equipment is returned to such installation.

h. This warranty does not apply if damage to the equipment is occasioned by fault or negligence of the Government.

i. Inspection and repair of defective equipment under this warranty will generally be performed at the customer location; however it may be performed at a variety of Contractor or the locations, depending on the type of equipment involved. Specific return instructions will be provided by Customer Care as part of the service call. Return shipment of defective equipment, either repaired or replaced, will generally be made within 7-10 days after receipt, contingent upon parts availability.

j. Software and Peripheral products will be furnished with the standard warranty offered by the manufacturer.

7. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the ordering activity will be charged will be the price for the end-item IT system in effect at the time of ordering activity order placement (i.e. the price quoted by Dell) or the price that is in effect at the time the order is entered into Dell's Order Management System, whichever is less. In the event the end-item IT system purchase price is lower than the price in effect at the time of order placement (i.e. the Delivery Order price is higher than the current price), the order will be entered and upon shipment, invoiced at the lower price. The Government is responsible for de-obligation of excess funds remaining on the Delivery Order. If the Delivery Order price at the time of order entry is higher than the price at the time of order placement, the lower price shall be honored. This provision applies to SIN 33411 hardware products only.

8. ACCELERATED DELIVERY OPTIONS

In addition to the normal accelerated delivery options discussed in paragraph 6 of the Information for Ordering Activities section of this AFSSPL, Dell offers two programs, Readyship and Delivery on Demand. A nominal

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additional fee to cover Dell's cost in warehousing may be charged for both the service, currently as an "open market" charge, subject to negotiation between the ordering activity and Dell, which will be disclosed at the time of quote.

a. **READYSHIP.** Dell's ReadyShip service provides a rapid deployment (shortened SLA) process for a steady volume of Eligible Products (defined below). The service is available on certain system models and configurations at Dell's sole discretion and approval, which are subject to change. Currently, eligible products include selected, standard configurations of Dell PowerEdge, Dell PowerVault, Dell PowerConnect, Dell OptiPlex, and Dell Latitude systems. Dell will build and stock quantities of products based on the customer's forecast demand. The products will be warehoused at a Dell contractor facility until the customer submits a purchase order, at which time eligible products ordered will be shipped.

b. **DELIVERY ON DEMAND.** Dell's Delivery on Demand service offers customers a convenient and efficient way to manage fluctuating volume of orders from its buyers by keeping a supply of preconfigured, prebuilt systems in an off-site warehouse and managing such inventory to meet demands. The service is available on certain system models and configurations at Dell's sole discretion and approval, which are subject to change. Currently, selected, standard configurations of Dell PowerEdge, Dell PowerVault, Dell PowerConnect, Dell OptiPlex, and Dell Latitude systems are available under the program. Dell will build and stock quantities of Eligible Products based on customer purchase orders of eligible products. If the customer's purchase order contains varied shipment quantities to multiple ship-to locations, Dell may break down the purchase order into separate orders in its ordering system according to the ship-to locations. The products will be warehoused at a Dell contractor's facility until Customer submits a notice of shipment, requesting shipment. After Dell receives and accepts the shipment notification, the products released will be shipped.

9. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all applicable laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

10. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an ordering activity determines that Information Technology equipment will be replaced, the ordering activity shall follow the contracting policies and procedures in the FAR, the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).

11. REPAIR PARTS/SPARE PARTS PROVISIONS

All parts, furnished as spares or as repair parts in connection with repair of equipment, shall be new or like new (tested equivalent to new) parts manufactured by the equipment manufacturer.

**TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE OF EQUIPMENT, REPAIR SERVICES AND/OR
REPAIR PARTS / SPARE PARTS
(SPECIAL ITEM NUMBER 811212)**

I. REPAIR SERVICE – PRODUCTS NO LONGER UNDER WARRANTY

1. SERVICE AREAS

- a. Given the wide range types, sizes and complexity of product available under this Contract, return to depot repair is only available for selected client products. Please contact Dell Technical Support for additional information.
- b. For most Dell-branded products, repair of defective equipment is performed at the end-user location. Specific return instructions will be provided by Customer Care and/or Technical Support. To obtain a repair quote and/or purchase repair services, contact Technical Support to set up a repair service. Enter the product's service tag-number at t: <http://www.dell.com/support/home/us/en/04?c=us&l=en&s=bsd> and follow the prompts.

2. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

Agencies may use written orders, EDI orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service and/or repair parts/spare parts under this Contract. Orders for repair service shall not extend beyond the end of the Contract period. Customer kits (other than monitors, keyboards and mice) sold as items to be installed into or with a Dell system are considered to be part of that system.

3. LOSS OR DAMAGE

When the Government sends equipment to the Contractor's establishment for repairs, the Government shall be responsible for any damage or loss from the time the equipment is shipped from the Government location until it is received by the Contractor. The Contractor shall be responsible for any damage or loss from the time the equipment is shipped from the Contractor's location until it is received at the Government installation.

4. SCOPE

- a. The Contractor shall provide maintenance for all equipment listed herein, as requested by the ordering activity during the Contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule. Repair Parts are generally available up to 5 years from the date of the product EOL (End of Life).
- b. Equipment placed under maintenance service shall be in good operating condition.
 - i. In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor, without charge to the ordering activity.
 - ii. Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
 - iii. If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 811212 (or outside the scope of this Contract).

5. RESPONSIBILITIES OF THE ORDERING ACTIVITY

- a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.
- b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.
- c. If the ordering activity desires a factory authorized/certified service personnel then this should be clearly stated in the task or delivery order.

6. RESPONSIBILITIES OF THE CONTRACTOR

- a. The Contractor shall always be responsive to the Government's repair service needs. The Contractor shall perform all repair services which are ordered by the Government during the Contract term.
- b. If products are returned to the Contractor for repair, the turnaround time of the repaired product is 7 - 10 days after receipt of the equipment at the Contractor's repair service facility, contingent upon parts availability.
- c. Only new and tested equivalent to new standard parts shall be used in effecting repairs. Parts which have been replaced shall remain the property of the Contractor. Notwithstanding the foregoing, non-volatile memory components shall be retained by the Government.

7. REPAIR SERVICE RATE PROVISIONS

- a. **CHARGES.** Charges for repair service be computed on a per incident charge that will vary, based upon the type of system being repaired. Parts will be billed separately. De-installation, relocation and re-installation are available under Special Item Number 33411. Contact Dell Support further information at:

<http://www.dell.com/support/home/us/en/04?c=us&l=en&s=bsd>

- b. **TRAVEL OR TRANSPORTATION AT THE CONTRACTORS SHOP**
 - i. When equipment is returned to the Contractor's shop for adjustment or repairs which are not covered by the guarantee provision, Ordering Activity agrees to pay any travel expenses in accordance with FTR/JTR, as applicable, Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.
 - ii. The ordering activity should not return defective equipment to the Contractor for adjustments and repairs or replacement without its prior consultation and instruction.
- c. **LABOR RATES.** The repair service rates agreed upon between the ordering activity and the Contractor shall entitle the ordering activity to repair service during the period 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays observed at, or as otherwise mutually agreed by the Government and the Contractor

8. REPAIR PARTS/SPARE PARTS RATE PROVISIONS

All parts, furnished as spare parts, or as repair parts in connection with repair of equipment either by the Contractor or the end-user, shall be new or like new (tested equivalent to new) parts manufactured by the equipment manufacturer. All parts shall be furnished at prices discounted 15% (exclusive of IFF) from the Contractor's commercial price list and are not required to be individually listed on the Contractor's AFSSPL. Repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this AFSSPL, such scope including equipment types/models that have been replaced by follow-on products are no longer available for sale.

9. GUARANTEE REPAIR SERVICE AND REPAIR/SPARE PARTS

- a. **Repair Service.** All repair work will be guaranteed for a period of ninety (90) calendar days.
- b. **Repair/Spares Parts.** All parts, furnished either as spares or repair parts in connection with repair of equipment, will be unconditionally guaranteed for the longer of 1) ninety (90) days or 2) the remainder of the Dell system warranty in the system in which the parts are being installed.

10. INVOICES AND PAYMENTS

Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of the work. Payment under blanket purchase orders for repair parts will be made monthly except where cash payment procedures are used. Invoices shall be submitted separately to each ordering activity ordering services under the Contract. The cost of repair parts shall be shown as a separate item on the invoice.

II. ENHANCED REPAIR SERVICE / MAINTENANCE OF EQUIPMENT UNDER CONTRACTOR WARRANTY

Dell products sold under this FSS Contract include the standard Dell commercial warranty set forth in paragraph 6. Warranty for Dell Product, of SIN 33411 section above. For an additional charge, Dell offers a wide variety of enhanced warranty and maintenance provisions, tailorable to the needs of the ordering activity and the end-user (e.g. 2 hour service, system health monitoring). These services are sold under general marketing moniker of "ProSupport" and "ProSupport Plus." The ProSupport offerings vary considerably based upon system location, complexity and the response time needs of the ordering activity and end-user. Please refer to <https://pilot.search.dell.com/prosupport> or contact your Dell Sales Representative for additional information. Also please note that some of Dell's ProSupport or ProSupport Plus offerings may not be available for certain end-users, and-or in certain global regions, given stringent Government security and data protection requirement.

III. AFTER POINT OF SALE WARRANTY (APOS)

In addition to the repair and maintenance services discussed in section I above, APOS warranty is available for products sold under this FSS Contract, after the warranty included with the initial system purchase has expired. Pricing for, and availability of, APOS warranty varies depending on system type, warranty lapse time (drives the warranty reinstatement price), desired warranty term, age of system, etc. Please refer to <https://www.dell.com/en-us/collaterals/unauth/brochures/services/apos-leave-behind-bdm.pdf> or your Dell APOS Sales Representative for additional information.

**TERMS AND CONDITIONS APPLICABLE TO SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210) AND
SOFTWARE MAINTENANCE SERVICES
(SPECIAL ITEM NUMBER 54151)**

0. DEFINITIONS

a. Term Licenses. The word "Term" is defined in this FSS Contract as "a limited period of time." Term Software Licenses have a limited duration and are not owned in perpetuity. Unless the Contract provides an option for converting Term licenses into perpetual licenses, end users lose the right to use these licenses upon the end of the term period. This SIN is NOT Infrastructure as a Service (IaaS), Platform as a Service (PaaS), or Software as a Service (SaaS) as defined in SIN 518210C - Cloud and Cloud-Related IT Professional Services.

b. Perpetual Licenses. The word "perpetual" is defined in this Contracts as "continuing forever, everlasting, valid for all time."

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender those items that conform to the requirements of this Contract. Acceptance shall occur on the day of proof of delivery of the product to the ordering activity.

2. GUARANTEE/WARRANTY/RETURNS POLICY

a. WARRANTY/LICENSE

i. Dell Software. This subparagraph covers all software that is distributed with the Dell product, for which there is no separate license agreement between the buyer and the manufacturer or owner of the software. Included as Appendix A is the GSA- approved Dell Enterprise License Agreement ("ELA"). The ELA covers Dell-branded software (as listed on Exhibit A thereto) and is normalized to eliminate conflicts with U.S. law as set forth on Exhibit B thereto.

ii. Third-party software products.

(1) Dell does not warrant third-party software products. Any warranty provided on third-party software is provided by the publisher or original manufacturer and may vary from product to product. All software furnished pursuant to the terms of this Contract will be unconditionally guaranteed for defects in the media the software is provided on for a period of one (1) year, beginning on the first day of acceptance.

(2) License Agreement. All software, including Microsoft software, is provided subject to the license agreement provided with the software, either pre-loading on the system or as part of the software package. Ordering activity acknowledges that there may be agrees that it will be bound by the license agreement. No software will be available under the Contract unless the EULA has been approved by GSA. Notwithstanding the forgoing, the terms of GSAR

c. LIMITATION OF LIABILITY. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's gross negligence; or (2) for fraud.

d. SOFTWARE RETURNS POLICY. Software may not be returned at any time, unless the software being returned is:

- i. Application software or operating systems installed by Dell on a returnable system which is being returned within the applicable return period; or
- ii. Media-based software that is unopened and still in its sealed package or, if delivered electronically, software that you have not accepted by clicking "I agree to these Terms and Conditions. Specific return instructions may be found at:

3. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined: (select software maintenance type):
- i. Software Maintenance as a Product (SIN 511210). Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self-diagnostics. Software Maintenance as a product is billed at the time of purchase.
 - ii. Software Maintenance as a Service (SIN 54151). Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.
- b. Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). Prompt payment discount, if applicable, shall be shown on the invoice.

4. TECHNICAL SERVICES

The Contractor, without additional charge to the Government, shall provide a point of contact the purpose of which is to provide user assistance and guidance in the implementation of the operating system software for the first 30 days from the date of acceptance. User assistance may be provided by Dell or the software manufacturer. Assistance is available through Dell Technical Support; the Technical Support telephone numbers may vary by product type and are available online (as is support via chat and email) on the "Call Technical Support" page at: <http://www.dell.com/support/home/us/en/04?c=us&l=en&s=bsd>

On that site, click on the "Telephone" button, you will then be asked for your Dell Service Tag, after which the appropriate telephone number will be provided. Assistance is available from 6:00 a.m. Central Time to 9:00 p.m. Central Time, Monday through Friday, and 8:00 a.m. Central Time to 4:00 p.m. Central Time, Saturday, Contractor's scheduled holidays; and may be available 24x7 depending on system type. Application software support can be purchased optionally from the software manufacturer.

5. PERIODS OF SOFTWARE LICENSES

- a. The Contractor shall honor orders for periods for the duration of the Contract period or a lesser period of time.
- b. Term Licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar day's written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for maintenance, the period of maintenance shall automatically expire on September 30 of the Contract period, or at the end of the Contract period, whichever occurs first. Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the Contract period.
- d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule Contract for a period up to the expiration of the Contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the maintenance is to be terminated at that time. Orders for the continuation of maintenance will be required if the maintenance is to be continued during the subsequent period.

6. UTILIZATION LIMITATIONS

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

- i. Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
- ii. Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.
- iii. Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
- iv. The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- v. "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule Contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF CLOUD COMPUTING SERVICES
(SPECIAL ITEM NUMBER 518210C)**

NOTE: If procuring related IT Professional Services over and above initial onboarding and training, please reference the SIN 54151S Section below.

1. SCOPE

The prices, terms and conditions stated under Special Item Number 518210C Cloud Computing Services apply exclusively to Cloud Computing Services within the scope of this Information Technology Schedule.

This SIN provides ordering activities with access to technical services that run in cloud environments and meet the NIST Definition of Cloud Computing Essential Characteristics. Services relating to or impinging on cloud that do not meet all NIST essential characteristics should be listed in other SINs.

The scope of this SIN is limited to cloud capabilities provided entirely as a service. Hardware, software and other artifacts supporting the physical construction of a private or other cloud are out of scope for this SIN. Currently, an Ordering Activity can procure the hardware and software needed to build on premise cloud functionality, through combining different services on other FSS Contract SINs (e.g. 54151S).

This Contract offers all sub-categories in scope for this SIN: Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS). See service model guidance below for advice on sub-category selection. Sub-category selection within this SIN is optional for any individual cloud service offering, and new cloud computing technologies that do not align with the aforementioned three sub-categories may be included without a sub-category selection so long as they comply with the essential characteristics of cloud computing as outlined by NIST. Table 1 is representation of the scope and sub-categories.

2. GUARANTEE/WARRANTY

a. Warranty/License for third-party software products.

- i. Dell does not warrant third-party software products. Any warranty provided on third-party software is provided by the publisher or original manufacturer and may vary from product to product. All software furnished pursuant to the terms of this contract will be unconditionally guaranteed for defects in the media on which the software is provided for a period of one (1) year, beginning on the first day of acceptance.
- ii. License Agreement. All software, including Microsoft software, is provided subject to the license agreement provided with the software, either pre-loaded on the system or as part of the software package. Ordering Office agrees that it will be bound by the license agreement.

b. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

c. Return Policy. The ordering activity may return products to Dell up to 30 days from the day they are delivered. To return products, you must call Dell Customer Service (800) 284-1200 to receive a Credit Return Authorization Number. You must ship the products to Dell in their original packaging or equivalent, prepay the shipping charges, and you must insure the shipment or accept the risk of loss or damage during shipment. Software is returnable only if the sealed package containing the diskettes is unopened. Returned products must be in as new condition, and all of the manuals, diskettes, power cords and other items included with a product must be returned with it.

Table 1: Cloud Computing Services SIN

SIN Description	Sub-Categories ³
<ul style="list-style-type: none"> • Commercially available cloud computing services • Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing essential characteristics • Open to all deployment models (private, public, community or hybrid), vendors specify deployment models 	<p>1. Software as a Service (SaaS): Consumer uses provider's applications on cloud infrastructure. Does not manage/control platform or infrastructure. Limited application level configuration may be available</p> <p>2. Platform as a Service (PaaS): Consumer deploys applications onto cloud platform service using provider-supplied tools. Has control over deployed applications and some limited platform configuration but does not manage the platform or infrastructure.</p> <p>3. Infrastructure as a Service (IaaS): Consumer provisions computing resources. Has control over OS, storage, platform, deployed applications and some limited infrastructure configuration, but does not manage the infrastructure.</p>

3. DESCRIPTION OF CLOUD COMPUTING SERVICES AND PRICING

- a. Cloud computing services available under the Contract consist of the following Microsoft products:
- Office 365 **Microsoft Azure (Service Model: IaaS and PaaS/Deployment Model: Public Cloud and Government Community Cloud)**
 - **Dynamics CRM Online (Service Model: SaaS/Deployment Model: Public Cloud and Government Community Cloud)**
 - **Microsoft Intune (Service Model: SaaS/Deployment Model: Public Cloud)**
- i. Cloud services pricing is set forth in Appendix A.
- ii. Mapping of Microsoft Cloud Properties to NIST Cloud Characteristics is set forth in Table 3 below.
- b. Information technology hardware products necessary for a cloud implementation, if any, are available under Dell Marketing L.P.'s GSA Schedule 70 (GS-35F-059DA), through a GSA CTA. Dell Marketing L.P. is an affiliate of Dell Federal Systems L.P. Professional services are available under SIN 54151S of this Contract.

4. RESPONSIBILITIES OF THE CONTRACTOR. The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

a. Acceptance Testing

Any required Acceptance Test Plans and Procedures shall be negotiated by the Ordering Activity at task order level. The Contractor shall perform acceptance testing of the systems for Ordering Activity approval in accordance with the approved test procedures.

b. Training

If training is provided commercially the Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. Contractor is responsible for indicating if there are separate training charges.

c. Information Assurance/Security Requirements

The contractor shall meet information assurance/security requirements in accordance with the Ordering Activity requirements at the Task Order level.

³ Offerors may optionally select the single sub-category that best fits each cloud service offering, per Service Model Guidance, or select no sub-category if the offering does not fit an existing NIST service model.

d. **Related Professional Services**

The Contractor is responsible for working with the Ordering Activity to identify related professional services and any other services available on other SINs that may be associated with deploying a complete cloud solution. Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN.

e. **Performance of Cloud Computing Services**

The Contractor shall respond to Ordering Activity requirements at the Task Order level with proposed capabilities to Ordering Activity performance specifications or indicate that only standard specifications are offered. In all cases the Contractor shall clearly indicate standard service levels, performance and scale capabilities. The Contractor shall provide appropriate cloud computing services on the date and to the extent and scope agreed to by the Contractor and the Ordering Activity.

f. **Reporting**

The Contractor shall respond to Ordering Activity requirements and specify general reporting capabilities available for the Ordering Activity to verify performance, cost and availability. In accordance with commercial practices, the Contractor may furnish the Ordering Activity/user with a monthly summary Ordering Activity report.

5. RESPONSIBILITIES OF THE ORDERING ACTIVITY

The Ordering Activity is responsible for indicating its unique cloud computing services requirements. Additional requirements should not contradict existing SIN or IT Schedule 70 Terms and Conditions. Ordering Activities should include (as applicable) Terms & Conditions to address Pricing, Security, Data Ownership, Geographic Restrictions, Privacy, SLAs, etc. Cloud services typically operate under a shared responsibility model, with some responsibilities assigned to the Cloud Service Provider (CSP), some assigned to the Ordering Activity, and others shared between the two. The distribution of responsibilities will vary between providers and across service models. Ordering activities should engage with CSPs to fully understand and evaluate the shared responsibility model proposed. Federal Risk and Authorization Management Program (FedRAMP) documentation will be helpful regarding the security aspects of shared responsibilities, but operational aspects may require additional discussion with the provider.

a. **Ordering Activity Information Assurance/Security Requirements Guidance**

- i. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA) as applicable.
- ii. The Ordering Activity shall assign a required impact level for confidentiality, integrity and availability (CIA) prior to issuing the initial statement of work.⁴ The Contractor must be capable of meeting at least the minimum security requirements assigned against a low- impact information system in each CIA assessment area (per FIPS 200) and must detail the FISMA capabilities of the system in each of CIA assessment area.
- iii. Agency level FISMA certification, accreditation, and evaluation activities are the responsibility of the Ordering Activity. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Cloud Computing Services.
- iv. The Ordering Activity has final responsibility for assessing the FedRAMP status of the service, complying with and making a risk-based decision to grant an Authorization to Operate (ATO) for the cloud computing service, and continuous monitoring. A memorandum issued by the Office of Management and Budget (OMB) on Dec 8, 2011 outlines the responsibilities of Executive departments and agencies in the context of FedRAMP compliance.⁵

⁴ Per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, "Standards for Security Categorization of Federal Information and Information Systems") (FIPS 200, "Minimum Security Requirements for Federal Information and Information Systems")

⁵ MEMORANDUM FOR CHIEF INFORMATION OFFICERS: Security Authorization of Information Systems in Cloud Computing Environments. December 8, 2011.

- v. Ordering activities are responsible for determining any additional information assurance and security related requirements based on the nature of the application and relevant mandates.

b. Deployment Model

If a particular deployment model (Private, Public, Community, or Hybrid) is desired, Ordering Activities are responsible for identifying the desired model(s). Alternately, Ordering Activities could identify requirements and assess Contractor responses to determine the most appropriate deployment model(s).

c. Delivery Schedule

The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in Information for Ordering Activities Applicable to All Special Item Numbers.

d. Interoperability

Ordering Activities are responsible for identifying interoperability requirements. Ordering Activities should clearly delineate requirements for API implementation and standards conformance.

e. Performance of Cloud Computing Services

The Ordering Activity should clearly indicate any custom minimum service levels, performance and scale requirements as part of the initial requirement.

f. Reporting

Any cost, performance or availability reporting should be clearly identified as part of the initial requirement.

g. Privacy

The Ordering Activity should specify the privacy characteristics of their service and engage with the Contractor to determine if the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could be requiring assurance that the service is capable of safeguarding Personally Identifiable Information (PII), in accordance with NIST SP 800-122⁶ and OMB memos M- 06-16⁷ and M-07-16⁸. An Ordering Activity will determine what data elements constitute PII according to OMB Policy, NIST Guidance and Ordering Activity policy.

h. Accessibility

The Ordering Activity should specify the accessibility characteristics of their service and engage with the Contractor to determine the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could require assurance that the service is capable of providing accessibility based on Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

i. Geographic Requirements

Ordering activities are responsible for specifying any geographic requirements and engaging with the Contractor to determine that the cloud services offered have the capabilities to meet geographic requirements for all anticipated task orders. Common geographic concerns could include whether service data, processes and related artifacts can be confined on request to the United States and its territories, or the continental United States (CONUS).

j. Data Ownership and Retrieval and Intellectual Property

Intellectual property rights are not typically transferred in a cloud model. In general, CSPs retain ownership of the Intellectual Property (IP) underlying their services and the customer retains ownership of its intellectual property. The CSP gives the customer a license to use the cloud services for the duration of the contract without transferring rights. The government retains ownership of the IP and data they bring to the customized use of the service as spelled out in the FAR and related materials.

⁶NIST SP 800-122, "Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)"

⁷ OMB memo M-06-16: Protection of Sensitive Agency Information <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-16.pdf>

⁸ OMB Memo M-07-16: Safeguarding Against and Responding to the Breach of Personally Identifiable Information <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

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General considerations of data ownership and retrieval are covered under the terms of Schedule 70 and the FAR and other laws, ordinances, and regulations (Federal, State, City, or otherwise). Because of considerations arising from cloud shared responsibility models, ordering activities should engage with the Contractor to develop more cloud-specific understandings of the boundaries between data owned by the government and that owned by the cloud service provider, and the specific terms of data retrieval.

In all cases, the Ordering Activity should enter into an agreement with a clear and enforceable understanding of the boundaries between government and cloud service provider data, and the form, format and mode of delivery for each kind of data belonging to the government.

The Ordering Activity should expect that the Contractor shall transfer data to the government at the government's request at any time, and in all cases when the service or order is terminated for any reason, by means, in formats and within a scope clearly understood at the initiation of the service. Example cases that might require clarification include status and mode of delivery for:

- Configuration information created by the government and affecting the government's use of the cloud provider's service.
- Virtual machine configurations created by the government but operating on the cloud provider's service.
- Profile, configuration and other metadata used to configure SaaS application services or PaaS platform services.

The key is to determine in advance the ownership of classes of data and the means by which Government owned data can be returned to the Government.

k. Service Location Distribution

The Ordering Activity should determine requirements for continuity of operations and performance and engage with the Contractor to ensure that cloud services have adequate service location distribution to meet anticipated requirements. Typical concerns include ensuring that:

- Physical locations underlying the cloud are numerous enough to provide continuity of operations and geographically separate enough to avoid an anticipated single point of failure within the scope of anticipated emergency events.
- Service endpoints for the cloud are able to meet anticipated performance requirements in terms of geographic proximity to service requestors.

Note that cloud providers may address concerns in the form of minimum distance between service locations, general regions where service locations are available, etc.

l. Related Professional Services

Ordering activities should engage with Contractors to discuss the availability of limited assistance with initial setup, training and access to the services that may be available through this SIN.

Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN. Ordering activities should consult the appropriate GSA professional services schedule.

6. GUIDANCE FOR CONTRACTORS

This section offers guidance for interpreting the Contractor Description Requirements in Table 2, including the NIST essential cloud characteristics, service models and deployment models. This section is not a list of requirements.

Contractor-specific definitions of cloud computing characteristics and models or significant variances from the NIST essential characteristics or models are discouraged and will **not** be considered in the scope of this SIN or accepted

in response to Factors for Evaluation. The only applicable cloud characteristics, service model/subcategories and deployment models for this SIN will be drawn from the NIST 800-145 special publication. Services qualifying for listing as cloud computing services under this SIN must substantially satisfy the essential characteristics of cloud computing as documented in the NIST Definition of Cloud Computing SP 800-145.

Contractors must select deployment models corresponding to each way the service can be deployed. Multiple deployment model designations for a single cloud service are permitted but at least one deployment model must be selected.

In addition, contractors submitting services for listing under this SIN are encouraged to select a sub- category for each service proposed under this SIN with respect to a single principal NIST cloud service model that most aptly characterizes the service. Service model categorization is optional.

Both service and deployment model designations must accord with NIST definitions. Guidance is offered in this document on making the most appropriate selection.

a. NIST Essential Characteristics

General Guidance

NIST’s essential cloud characteristics provide a consistent metric for whether a service is eligible for inclusion in this SIN. It is understood that due to legislative, funding and other constraints that government entities cannot always leverage a cloud service to the extent that all NIST essential characteristics are commercially available. For the purposes of the Cloud SIN, meeting the NIST essential characteristics is determined by whether each essential capability of the commercial service is available for the service, whether or not the Ordering Activity actually requests or implements the capability. The guidance in Table 3 offers examples of how services might or might not be included based on the essential characteristics, and how the Contractor should interpret the characteristics in light of current government contracting processes.

Table 2: Guidance on Meeting NIST Essential Characteristics

Characteristic	Capability	Guidance
On-demand self-service	<ul style="list-style-type: none"> Ordering activities can directly provision services without requiring Contractor intervention. This characteristic is typically implemented via a service console or programming interface for provisioning 	<p>Government procurement guidance varies on how to implement on- demand provisioning at this time. Ordering activities may approach on-demand in a variety of ways, including “not-to-exceed” limits, or imposing monthly or annual payments on what are essentially on demand services.</p> <p>Services under this SIN must be capable of true on- demand self-service, and ordering activities and Contractors must negotiate how they implement on demand capabilities in practice at the task order level:</p> <ul style="list-style-type: none"> Ordering activities must specify their procurement approach and requirements for on-demand service. Contractors must propose how they intend to meet the approach. Contractors must certify that on-demand self-service is technically available for their service should procurement guidance become available.
Broad Network Access	<ul style="list-style-type: none"> Ordering activities are able to access services over standard agency networks. Service can be accessed provisioned using standard devices standard devices such as browsers, tablets and mobile phones 	<ul style="list-style-type: none"> Broad network access must be available without significant qualification and in relation to the deployment model and security domain of the service. Contractors must specify any ancillary activities, services or equipment required to access cloud services or integrate cloud with other cloud or non- cloud networks and services. For example a private cloud might require an Ordering Activity to purchase or provide a dedicated router, etc. which is acceptable but should be indicated by the Contractor.
Resource Pooling	<ul style="list-style-type: none"> Pooling distinguishes cloud services from offsite hosting Ordering activities draw resources from a common pool maintained by the Contractor Resources may have general characteristics such as regional location 	<ul style="list-style-type: none"> The cloud service must draw from a pool of resources and provide an automated means for the Ordering Activity to dynamically allocate them. Manual allocation, e.g. manual operations at a physical server farm where Contractor staff configure servers in response to Ordering Activity requests, does not meet this requirement. Similar concerns apply to software and platform models; automated provisioning from a pool is required Ordering activities may request dedicated physical hardware, software or platform resources to access a private cloud deployment service. However the provisioned cloud resources must be drawn from a common pool and automatically allocated on request.

Measured Service	<ul style="list-style-type: none"> Measured service should be understood as a reporting requirement that enables an Ordering Activity to control their use in cooperation with self service 	<ul style="list-style-type: none"> Procurement guidance for on-demand self-service applies to measured service as well, i.e. rapid elasticity must be technically available but ordering activities and Contractors may mutually designate other contractual arrangements. Regardless of specific contractual arrangements, reporting must indicate actual usage, be continuously available to the Ordering Activity, and provide meaningful metrics appropriate to the service measured. Contractors must specify that measured service is available and the general sort of metrics and mechanisms available The goal of the Measured Service requirement is to ensure Ordering Activities realize the full benefit of “pay as you go” consumption models. Consumption measurements that are not discrete enough or frequent enough (greater than 30 days), will not fulfill this NIST essential characteristic and will not be eligible for inclusion in this SIN.
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Inheriting Essential Characteristics

Cloud services may depend on other cloud services, and cloud service models such as PaaS and SaaS are able to inherit essential characteristics from other cloud services that support them. For example a PaaS platform service can inherit the broad network access made available by the IaaS service it runs on, and in such a situation would be fully compliant with the broad network access essential characteristic. Services inheriting essential characteristics must make the inherited characteristic fully available at their level of delivery to claim the relevant characteristic by inheritance.

Inheriting characteristics does not require the inheriting provider to directly bundle or integrate the inherited service, but it does require a reasonable measure of support and identification. For example, the Ordering Activity may acquire an IaaS service from “Provider A” and a PaaS service from “Provider B”. The PaaS service may inherit broad network access from “Provider A” but must identify and support the inherited service as an acceptable IaaS provider.

Assessing Broad Access

Typically broad network access for public deployment models implies high bandwidth access from the public internet for authorized users. In a private cloud deployment internet access might be considered broad access, as might be access through a dedicated shared high bandwidth network connection from the Ordering Activity, in accord with the private nature of the deployment model.

Resource Pooling and Private Cloud

All cloud resource pools are finite, and only give the appearance of infinite resources when sufficiently large, as is sometimes the case with a public cloud. The resource pool supporting a private cloud is typically smaller with more visible limits. A finite pool of resources purchased as a private cloud service qualifies as resource pooling so long as the resources within the pool can be dynamically allocated to the ultimate users of the resource, even though the pool itself appears finite to the Ordering Activity that procures access to the pool as a source of dynamic service allocation.

Table 3: Mapping of Microsoft Cloud Properties to NIST Cloud Characteristics

Service	Mapping
Office 365	<ul style="list-style-type: none"> • On-demand self-service: Office 365 end users and administrators can unilaterally provision computing capabilities without requiring human interaction with Office 365 operational staff. • Broad network access: Office 365 is accessible over data networks and the public Internet and is accessible through standard mechanisms that promote use by heterogeneous thin or thick clients, to include mobile phones, tablets, laptops and workstations. • Resource pooling: Office 365 is a “multi-tenant” service, in which the computing resources are pooled to serve multiple customers, with different physical and virtual resources dynamically assigned and reassigned according to customer demand. The location of Office 365 resources such as storage, processing, memory and network are generally not known to the end user and do not affect the performance experienced by the end user. Government administrators of Office 365 tenants can specify data center locations but the specification of those locations do not impact the experience of the end user. • Rapid elasticity: Office 365 capabilities can be elastically provisioned and released automatically, to scale rapidly outward and inward commensurate with demand. To the end user, the capabilities available for provisioning appear to be unlimited and can be appropriated in any quantity at any time (subject to all relevant government acquisition regulations and governing law). • Measured service: Office 365 measures end user and organizational consumption across a number of meters relevant to Office 365 functionality, including but not limited to storage allocated to documents and email and functionality such as Unified Communications and client side software installation. Office 365 has multiple levels of costs based on usage.
Microsoft Azure (Service Model: IaaS and PaaS / Deployment Model: Public Cloud and Government Community Cloud)	<ul style="list-style-type: none"> • On-demand self-service: Azure tenant administrators can unilaterally provision computing capabilities such as server time, storage, network bandwidth and other computing capabilities, automatically without requiring human interaction. • Broad network access: Azure capabilities are available over the network and accessed through standard mechanisms via heterogeneous thin or thick client platforms such as mobile phones, tablets, laptops and workstations. • Resource pooling: The computing resources underlying Azure are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. Customers generally have no control or knowledge over the exact location of the provided resources but are able to specify location at a higher level of abstraction, such as region within the United States. • Rapid elasticity: Azure capabilities can be elastically provisioned and released automatically to scale rapidly outward and inward commensurate with demand. To the consumer, the Azure capabilities available for provisioning appear unlimited and can be appropriated in any quantity at any time. • Measured service: Azure automatically controls and optimizes resource use by leveraging a metering capability at an appropriate level of abstraction for the type of service, including storage, processing, bandwidth and active user accounts. Resource usage is monitored, controlled and reported via the Azure Portal as well as various Application Program Interfaces (APIs) available to consumers of Azure.

<p>Dynamics CRM Online (Service Model: SaaS/Deployment Model: Public Cloud and Government Community Cloud)</p>	<ul style="list-style-type: none"> • On-demand self-service: Dynamics CRM Online end users and administrators can unilaterally provision computing capabilities without requiring human interaction with Dynamics CRM Online operational staff. • Broad network access: Dynamics CRM Online is accessible over data networks and the public Internet and is accessible through standard mechanisms that promote use by heterogeneous thin or thick clients, to include mobile phones, tablets, laptops and workstations. • Resource pooling: Dynamics CRM Online is a “multi-tenant” service, in which the computing resources are pooled to serve multiple customers, with different physical and virtual resources dynamically assigned and reassigned according to customer demand. The location of Dynamics CRM Online resources such as storage, processing, memory and network are generally not known to the end user and do not affect the performance experienced by the end user. • Rapid elasticity: Dynamics CRM Online capabilities can be elastically provisioned and released automatically, to scale rapidly outward and inward commensurate with demand. To the end user, the capabilities available for provisioning appear to be unlimited and can be appropriated in any quantity at any time (subject to all relevant government acquisition regulations and governing law). • Measured service: Dynamics CRM Online measures end user and organizational consumption across a number of meters relevant to Dynamics CRM Online functionality, including but not limited to storage and functionality of features. Usage of Dynamics CRM
<p>Microsoft Intune (Service Model: SaaS/Deployment Model: Public Cloud)</p>	<ul style="list-style-type: none"> • On-demand self-service: Microsoft Intune is a cloud based mobile device management service operated by Microsoft. Users of Intune can unilaterally provision mobile device management (MDM) and mobile application management from a variety of client devices running Windows, iOS and Android while Intune subscription administrators can control the applications and devices managed by Intune without human intervention. • Broad network access: Microsoft Intune is accessible over the public Internet and can be accessed by heterogeneous thin or thick client platforms like phones, tablets, laptops and workstations via standard mechanisms. • Resource pooling: Microsoft Intune resources are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to customer demand. • Rapid elasticity: Microsoft Intune capabilities can be elastically provisioned and released automatically to scale rapidly outward and inward commensurate with demand. • Measured service: Microsoft Intune automatically controls and optimizes resource use by leveraging metering capabilities at a level of abstraction appropriate for mobile device and mobile application management. Microsoft Intune consumers, in particular the Intune subscription administrators, can view, monitor and control resource usage via an online portal.

b. NIST Service Model

The Contractor may optionally document the service model of cloud computing (e.g. IaaS, PaaS, SaaS, or a combination thereof, that most closely describes their offering, using the definitions in The NIST Definition of Cloud Computing SP 800-145. The following guidance is offered for the proper selection of service models.

NIST's service models provide this SIN with a set of consistent sub-categories to assist ordering activities in locating and comparing services of interest. Service model is primarily concerned with the nature of the service offered and the staff and activities most likely to interact with the service. Contractors should select a single service model most closely corresponding to their proposed service based on the guidance below. It is understood that cloud services can technically incorporate multiple service models and the intent is to provide the single best categorization of the service.

Contractors should take care to select the NIST service model most closely corresponding to each service offered. Contractors should not invent, proliferate or select multiple cloud service model sub- categories to distinguish their offerings, because ad-hoc categorization prevents consumers from comparing similar offerings. Instead vendors should make full use of the existing NIST categories to the fullest extent possible.

For example, in this SIN an offering commercially marketed by a Contractor as "Storage as a Service" would be properly characterized as Infrastructure as a Service (IaaS), storage being a subset of infrastructure. Services commercially marketed as "LAMP as a Service" or "Database as a Service" would be properly characterized under this SIN as Platform as a Service (PaaS), as they deliver two kinds of platform services. Services commercially marketed as "Travel Facilitation as a Service" or "Email as a Service" would be properly characterized as species of Software as a Service (SaaS) for this SIN. However, Contractors can and should include appropriate descriptions (include commercial marketing terms) of the service in the full descriptions of the service's capabilities.

When choosing between equally plausible service model sub-categories, Contractors should consider several factors:

- 1) **Visibility to the Ordering Activity.** Service model sub-categories in this SIN exist to help Ordering Activities match their requirements with service characteristics. Contractors should selected the most intuitive and appropriate service model from the point of view of an Ordering Activity.
- 2) **Primary Focus of the Service.** Services may offer a mix of capabilities that span service models in the strict technical sense. For example, a service may offer both IaaS capabilities for processing and storage, along with some PaaS capabilities for application deployment, and SaaS capabilities for specific applications. In a service mix situation the Contractor should select the service model that is their primary focus. Alternatively contractors may choose to submit multiple service offerings for the SIN, each optionally and separately subcategorized.
- 3) **Ordering Activity Role.** Contractors should consider the operational role of the Ordering Activity's primary actual consumer or operator of the service. For example services most often consumed by system managers are likely to fit best as IaaS; services most often consumed by application deployers or developers as PaaS, and services most often consumed by business users as SaaS.
- 4) **Lowest Level of Configurability.** Contractors can consider IaaS, PaaS and SaaS as an ascending hierarchy of complexity, and select the model with the lowest level of available Ordering Activity interaction. As an example, virtual machines are an IaaS service often bundled with a range of operating systems, which are PaaS services. The Ordering Activity usually has access to configure the lower level IaaS service, and the overall service should be considered IaaS. In cases where the Ordering Activity cannot configure the speed, memory, network configuration, or any other aspect of the IaaS component, consider categorizing as a PaaS Service.

Cloud management and cloud broker services should be categorized based on their own characteristics and not those of the other cloud services that are their targets. Management and broker services typically fit the SaaS service model, regardless of whether the services they manage are SaaS, PaaS or IaaS. Use Table 4 to determine which service model is appropriate for the cloud management or cloud broker services, or, alternately choose not to select a service model for the service.

The guidance in Table 4 offers examples of how services might be properly mapped to NIST service models and how a Contractor should interpret the service model sub-categories.

Table 4: Guidance on Mapping to NIST Service Models

Service Model	Guidance
Infrastructure as a Service (IaaS)	<p>Select an IaaS model for service based equivalents of hardware appliances such as virtual machines, storage devices, routers and other physical devices.</p> <ul style="list-style-type: none"> • IaaS services are typically consumed by system or device managers who would configure physical hardware in a non-cloud setting • The principal customer interaction with an IaaS service is provisioning then configuration, equivalent to procuring and then configuring a physical device. <p>Examples of IaaS services include virtual machines, object storage, disk block storage, network routers and firewalls, software defined networks.</p> <p>Gray areas include services that emulate or act as dedicated appliances and are directly used by applications, such as search appliances, security appliances, etc. To the extent that these services or their emulated devices provide direct capability to an application they might be better classified as Platform services (PaaS). To the extent that they resemble raw hardware and are consumed by other platform services they are better classified as IaaS.</p>

<p>Platform as a Service (PaaS)</p>	<p>Select a PaaS model for service based equivalents of complete or partial software platforms. For the purposes of this classification, consider a platform as a set of software services capable of deploying all or part of an application.</p> <ul style="list-style-type: none"> • A complete platform can deploy an entire application. Complete platforms can be proprietary or open source • Partial platforms can deploy a component of an application which combined with other components make up the entire deployment • PaaS services are typically consumed by application deployment staff whose responsibility is to take a completed agency application and cause it to run on the designated complete or partial platform service • The principal customer interaction with a PaaS service is deployment, equivalent to deploying an application or portion of an application on a software platform service. • A limited range of configuration options for the platform service may be available. <p>Examples of complete PaaS services include:</p> <ul style="list-style-type: none"> • A Linux/Apache/MySQL/PHP (LAMP) platform ready to deploy a customer PHP application, • a Windows .Net platform ready to deploy a .Net application, • A custom complete platform ready to develop and deploy an customer application in a proprietary language • A multiple capability platform ready to deploy an arbitrary customer application on a range of underlying software services. <p>The essential characteristic of a complete PaaS is defined by the customer's ability to deploy a complete custom application directly on the platform.</p> <p>PaaS includes partial services as well as complete platform services. Illustrative examples of individual platform enablers or components include:</p> <ul style="list-style-type: none"> • A database service ready to deploy a customer's tables, views and procedures • A queuing service ready to deploy a customer's message definitions • A security service ready to deploy a customer's constraints and target • applications for continuous monitoring <p>The essential characteristic of an individual PaaS component is the customer's ability to deploy their unique structures and/or data onto the component for a partial platform function. Note that both the partial and complete PaaS examples all have two things in common:</p> <ul style="list-style-type: none"> • They are software services, which offer significant core functionality out of the box • They must be configured with customer data and structures to deliver results <p>As noted in IaaS, operating systems represent a gray area in that OS is definitely a platform service, but is typically bundled with IaaS infrastructure. If your service provides an OS but allows for interaction with infrastructure, please sub-categorize it as IaaS. If your service "hides" underlying infrastructure, consider it as PaaS.</p>
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Software as a Service (SaaS)	<p>Select a SaaS model for service based equivalents of software applications.</p> <ul style="list-style-type: none"> • SaaS services are typically consumed by business or subject-matter staff who would interact directly with the application in a non-cloud setting • The principal customer interaction with a SaaS service is actual operation and consumption of the application services the SaaS service provides. <p>Some minor configuration may be available, but the scope of the configuration is limited to the scope and then the permissions of the configuring user. For example an agency manager might be able to configure some aspects of the application for their agency but not all agencies. An agency user might be able to configure some aspects for themselves but not everyone in their agency. Typically only the Contractor would be permitted to configure aspects of the software for all users.</p> <p>Examples of SaaS services include email systems, business systems of all sorts such as travel systems, inventory systems, etc., wiki's, websites or content management systems, management applications that allow a customer to manage other cloud or non-cloud services, and in general any system where customers interact directly for a business purpose.</p> <p>Gray areas include services that customers use to configure other cloud services, such as cloud management software, cloud brokers, etc. In general these sorts of systems should be considered SaaS, per guidance in this document.</p>
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c. Deployment Model

Deployment models (e.g. private, public, community, or hybrid) are not restricted at the SIN level and any specifications for a deployment model are the responsibility of the Ordering Activity.

Multiple deployment model selection is permitted, but at least one model must be selected. The guidance in Table 5 offers examples of how services might be properly mapped to NIST deployment models and how the Contractor should interpret the deployment model characteristics. Contractors should take care to select the range of NIST deployment models most closely corresponding to each service offered.

Note that the scope of this SIN does not include hardware or software components used to construct a cloud, only cloud capabilities delivered as a service, as noted in the Scope section.

Table 5: Guidance for Selecting a Deployment Model

Deployment Model	Guidance
Private Cloud	The service is provided exclusively for the benefit of a definable organization and its components; access from outside the organization is prohibited. The actual services may be provided by third parties, and may be physically located as required, but access is strictly defined by membership in the owning organization.
Public Cloud	The service is provided for general public use and can be accessed by any entity or organization willing to contract for it.
Community Cloud	The service is provided for the exclusive use of a community with a definable shared boundary such as a mission or interest. As with private cloud, the service may be in any suitable location and administered by a community member or a third party.
Hybrid Cloud	The service is composed of one or more of the other models. Typically hybrid models include some aspect of transition between the models that make them up, for example a private and public cloud might be designed as a hybrid cloud where events like increased load permit certain specified services in the private cloud to run in a public cloud for extra capacity, e.g. bursting.

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY TRAINING
(SPECIAL ITEM NUMBER 611420)**

1. SCOPE

- a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location or via an online medium, as agreed to by the Contractor and the ordering activity.

2. ORDER

A written order, GSA Advantage!, credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this Contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3. TIME OF DELIVERY

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

4. CANCELLATION AND RESCHEDULING

- a. The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.
- b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.
- c. The ordering activity reserves the right to substitute one student for another up to the first day of class.
- d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

5. FOLLOW-UP SUPPORT

The Contractor agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training course. During this period, the student may contact Contractor's instructor(s) for refresher assistance and answers to related course curriculum questions.

6. LIABILITY FOR INJURY OR DAMAGE

The Contractor shall not be liable for any injury to the students, or damage to Government property arising from Contractor-provided classroom training, unless such injury or damage is due to the fault or negligence of the Contractor.

7. PURCHASE PRICE FOR TRAINING

- a. The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

b. Any Contractor travel required in the performance of Classroom Training must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

8. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324).

9. FORMAT AND CONTENT OF TRAINING

a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.

c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.

d. The Contractor shall provide the following information for each training course offered:

i. The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);

ii. The length of the course;

iii. Mandatory and desirable prerequisites for student enrollment;

iv. The minimum and maximum number of students per class;

v. The locations where the course is offered;

vi. Class schedules; and

vii. Price (per student, per class (if applicable)).

e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

10. "NO CHARGE" TRAINING

From time to time, the Contractor may offer training associated with equipment and/or software provided under this Contract, free of charge. Please contact your Dell Sales Representative or Account Executive for additional information.

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
(SPECIAL ITEM NUMBER 54151S)**

1. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 54151S Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility or at the ordering activity location, as agreed to by the Contractor and the ordering activity.
- c. Availability of IT Professional Services in certain OCONUS locations may vary. Ordering activities are encouraged to check availability with Contractor Services Sales Representatives.

2. PERFORMANCE INCENTIVES

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements, for fixed price tasks, under this contract in accordance with this clause.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the Contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the Contractor. Incentives shall be based on objectively measurable tasks.

3. ORDER

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this Contract. Blanket Purchase Agreements shall not extend beyond the end of the Contract period; all services and delivery shall be made and the Contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (April 1984) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the Contract. In the event of conflict between a task order and the Contract, the Contract will take precedence. In the event of a conflict between the terms of the task order and a Service Agreement (as defined in section 3.c below) the Contract will take precedence.
- c. Task order services will be described in one or more of the following: (i) "Service Descriptions" as generally described in this SIN 54151S and available at:

<http://www.dell.com/learn/us/en/uscorp1/terms-of-sale-commercial-and-public-sector-service-contracts>

The Statement of Work includes, for example:

- Dell's responsibilities
- The Government's responsibilities
- The specific conditions (Completion Criteria), if any, that Dell is required to meet to fulfill its obligations
- A performance period for Services and an estimated schedule for planning purposes
- Applicable charges (not including taxes) and any other terms
- Resumes shall be provided by Dell upon request.
- Services Agreement similar to those found at the URL in 3.c above.

4. PERFORMANCE OF SERVICES

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
- c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.
- e. Technical personnel shall remain under the supervision, management, and control of Dell, which shall include their assignment and evaluation. The tasks on which assigned personnel assist shall remain the responsibility of the Government. Therefore, Dell does not guarantee that the Government's task will be accomplished under this Contract, only that assistance shall be provided. No estimate made by Dell of the assistance to be provided to the ordering activity is guaranteed to any extent or in any way.
- f. Support Services may be performed by both Dell personnel and subcontracted non-Dell personnel. Dell will provide Support Service personnel with the necessary technical skills.
- g. "Third Party Products" means any third-party hardware, services or software. Some manufacturers' warranties or service contract terms and conditions for Third Party Products may become void if Dell or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). **DELL DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES.** Except as agreed to in writing between the ordering activity and Dell, Third Party Products shall be exclusively subject to terms and conditions between the third party and the ordering activity. Dell shall have no liability for Third Party Products and the ordering activity shall look exclusively to the third party provider for any damages or liability with respect to the provision of such Third Party Products. Except as otherwise specifically agreed to in a Service Agreement, the ordering activity authorizes Dell (or otherwise obtains the rights for Dell) to copy, install and modify, when necessary and as required by the Service Agreement, all Third Party Products, including software, to be used in the Services or to be copied or stored for subsequent re-installation of a backup system or data. The ordering activity warrants to Dell that it has obtained any licenses, consents, regulatory certifications or approvals required to give Dell and its subcontractors or employees such rights or licenses to access, copy, distribute, use and/or modify (including creating derivative works) or install any Third Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products

5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
 - i. Cancel the stop-work order; or

- ii. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this Contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be modified, in writing, accordingly, if-
 - i. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - ii. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order, as provided for in FAR 52.242-15.

6. INSPECTION OF SERVICES

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this Contract. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this Contract. Contractor's ISO 9001:2015 (expiration date January 24, 2023) certification constitutes an inspection system that is acceptable to the Government.

7. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all applicable laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

8. PROPRIETARY RIGHTS

- a. Except as otherwise specifically agreed to in a task order/Service Agreement, Dell will retain exclusive ownership in all Deliverables created by Dell hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by Dell thereunder. Dell grants the ordering activity a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely ordering activity's internal use. "Deliverables" means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures and recommendations that are prepared by Dell or its subcontractors in the course of performing the Services.
- b. Notwithstanding the provisions of section 8.a above, right, title and interest in all Deliverables shall vest in the ordering activity in accordance with FAR 52.227-14 Rights in Data – General, where such Deliverables are specifically identified by a separately priced CLIN on the task order or delivery order as deliverable data or restricted computer software. Ordering activity rights in data and restricted computer software not separately called out under a Delivery Order CLIN, if any, shall be in accordance with section 8.a above.
- c. Tools & Software. Dell will retain all intellectual property rights with respect to the processes, tools and software related to the Services. Any use by ordering activity, including the execution, reverse engineering, de-compilation, reproduction, modification, distribution, transmission, republication, display, transfer or performance, except as specifically permitted by Dell during the term of Services is prohibited.

9. RESPONSIBILITIES OF THE ORDERING ACTIVITY

a. Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

b. It is the ordering activity's responsibility to backup data on its systems. CONTRACTOR IS NOT RESPONSIBLE FOR LOSS OF OR DAMAGE TO DATA OR LOSS OF USE OF ANY OF THE ORDERING ACTIVITY'S COMPUTER OR NETWORK SYSTEMS. The ordering activity acknowledges that Contractor's performance and delivery of the Services are contingent upon: (i) subject to security regulations, ordering activity providing access to its personnel, facilities, equipment, hardware, software, network and information and (ii) ordering activity's timely decision-making, notification of relevant issues or information and granting of approvals and/or permission. Ordering Activity will promptly obtain and provide to Contractor any required consents necessary for Contractor's performance of the Services described in the applicable Service Description, SOW or Technical Specification Form.

c. Order activity agrees that any information or data disclosed or sent to Contractor, over the telephone, electronically or otherwise, is not confidential or proprietary to ordering activity, unless disclosed pursuant to a mutual non-disclosure agreement executed by the Parties.

d. Some Services may require Dell to access hardware or software that is not manufactured by Dell. Some manufacturers' warranties may become void if Dell or anyone else, other than the manufacturer or its authorized representative, works on the hardware or software. DELL DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES.

10. EXPORT; REGULATORY REQUIREMENTS

a. Export. The ordering activity warrants that any software provided by the ordering activity and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without an export license, or if such a license is required, the software is eligible for export under Bureau of Export Administration export license exception GOV.

b. Regulatory Requirements. Dell shall not be under any obligation to perform any Service Description, SOW or Technical Specification Form or to install any Third Party Products as part of the Services or proceed with Services if such Third Party Products, or the resulting software, do not satisfy the local regulatory requirements of the country to which the Products are to be shipped.

11. INDEMNIFICATION

Dell shall defend, indemnify and hold harmless ordering activity from any third-party claim or action that the Services or any Deliverables (excluding Third-Party Products) prepared or produced by Dell and delivered pursuant to the Service Agreement infringe or misappropriate that third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the country(ies) in which the Services or Deliverables are sold to ordering activity by Dell ("Indemnified Claims "). In addition, if Dell receives notice of a claim that, in Dell's reasonable opinion, is likely to result in an adverse ruling, then Dell shall at its option, (A) obtain a right for ordering activity to continue using such Service or Deliverable; (B) modify such Service or Deliverable to make it non-infringing; (C) replace such Service or Deliverable with a non-infringing equivalent; or (D) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated refund for the allegedly infringing Deliverable. Notwithstanding the foregoing, Dell shall have no obligation under this Section for any claim resulting or arising from (A) Ordering activity 's modifications of the Service or Deliverable that were not approved by Dell; (B) the combination, operation or use of the Service or Deliverable in connection with a third-party product or service (the combination of which causes the infringement); or (C) Dell's compliance with Ordering activity 's written specifications or directions, including the incorporation of any software or other materials or process provided by or requested by Ordering activity. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

12. INDEPENDENT CONTRACTOR

All IT Professional Services performed by the Contractor under the terms of this Contract shall be as an independent contractor, and not as an agent or employee of the ordering activity.

13. ORGANIZATIONAL CONFLICTS OF INTEREST

a. Definitions.

“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this Contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing Contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

14. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month. Such invoices may include generic, dollar value denominational skus – as listed on the applicable hardware/services GSA price list – to facilitate ease of invoicing. The value of the denominational skus shall tie back to the task order/Service Agreement pricing.

15. PAYMENTS

a. Charges will be invoiced monthly for services rendered. The ordering activity on individual orders may authorize progress payments. Progress payments shall be based upon completion of defined milestones.

b. For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission and within thirty (30) days of receipt of proper invoices or vouchers, the prices stipulated in this Contract for services rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at GSAR 552.212-4 (OCT 2018) (ALTERNATE I – JAN 2017) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this Contract. For time-and-materials/labor-hour orders applicable under FAR 52.216-31 (Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

- i. The ordering activity contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- ii. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
 - (1) The offeror;
 - (2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

c. If the Services are being performed on a time and materials or labor hour basis, any estimates provided by Dell are for planning purposes only.

16. RESUMES

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request. Please note that during the proposal phase of task order procurement, given the uncertainty of awardee and Contractor labor resource utilization requirements, sample resumes may be submitted. Upon award resumes of the individual(s) who will perform the service(s) will be provided to the ordering activity upon request.

17. INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this Contract, and will be considered a non-schedule item for purposes of including the cost on the delivery order. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

18. APPROVAL OF SUBCONTRACTS

The ordering activity may require that the Contractor receive, from the ordering activity's contracting officer, written consent before placing any subcontract for furnishing any of the work called for in a task order, which consent will not be unreasonably withheld.

19. WARRANTY FOR DELL SERVICES

a. **Limited Warranty.** DELL WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, DELL (INCLUDING ITS AFFILIATES, SUBCONTRACTORS AND AGENTS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, THE "DELL PARTY(IES)") MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES; ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES; OR ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION THE DELL PARTIES MAY MAKE.

b. **Limitation of Liability.** NEITHER THE DELL PARTIES NOR CUSTOMER WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY DELL. WHETHER DIRECT OR INDIRECT, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING, (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK, OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, OR (E) SERVICES, DELL PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE BY CUSTOMER. THE DELL PARTIES' AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY CLAIM OF LIABILITY ARISING OUT OF, OR IN CONNECTION WITH ANY SERVICE PROVIDED PURSUANT TO THIS MSA SHALL NOT EXCEED THE TOTAL AMOUNT PAID UNDER THE ORDER BY CUSTOMER FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE (12) MONTH PERIOD. EACH PARTY ACKNOWLEDGES THAT THESE LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE AND THAT, WITHOUT THESE LIMITATIONS, THE FEE FOR THE SERVICES PROVIDED HEREUNDER WOULD BE HIGHER. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's gross negligence; or (2) for fraud.

c. **High-Risk Application Disclaimer.** The Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems,

life-support machines, or any other application in which the failure of the Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High-Risk Activities**"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

20. SUPPORT SERVICES

Except as stated below, when Services consist of repair of Dell systems, such Services shall be those repair services that are necessary because of any existing defect or a defect occurs in materials or workmanship in the system or in any system component covered by this Agreement. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included. Unless otherwise provided in the Service Agreement, Services do not include repair of any system or system component which has been damaged as a result of: (i) accident, misuse, or abuse of the system or component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives), (ii) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (iii) the moving of the system from one geographic location to another or from one entity to another.

21. AVAILABLE IT PROFESSIONAL SERVICES

a. Dell Services leverages expertise in a wide range of IT services solutions, including but not limited to project management, infrastructure design, application development, and storage architecture to deliver end-to-end technology solutions addressing the government's critical information technology needs. These solutions help solve critical IT challenges, maximize the value of information technology investments, and create an efficient, effective and scalable enterprise, while minimizing expense and complexity.

b. Descriptions of Dell Services that are also generally available to Schedule 70 users are detailed on the link below. Additional information is available from your Dell Services Account Executive or Sales Representative. Certain hourly rate services are available through GSA teaming with Dell Federal Systems L.P.'s Schedule, GS-35F-0884P ("DFSPL") as well as cleared personnel, and selectively as open market items consistent with ordering activity regulations.

<https://www.dell.com/en-us/industry/federal/federal-government-it.htm#>

Service practice areas include:

- Support Services
- Application Modernization
- Application Services
- Business Process Outsourcing
- Cloud-Based Services (see SIN 518210C)
- Deployment Services
- Information Security Services
- Financing & Leasing
- IT Consulting
- Managed Services
- Training Services

22. PRICING

Dell Services offerings under this Contract are available only on a fixed price basis. Services are available on a time and materials or labor hour basis through a GSA CTA with DFSPL. Please contact your Dell Services Account Executive for additional information on pricing.

**TERMS AND CONDITIONS APPLICABLE TO INTRODUCTION OF NEW SUPPLIES AND NEW SERVICES
(SPECIAL ITEM NUMBER NEW)**

I. PC AS A SERVICE. SIN NEW Section I outlines the common service features for PC as a Service (“PCaaS” or the “Service(s)”), which is comprised of a combination of hardware, software and services (both close-to-the-box and professional) aggregated into a financing solution which provides a single price per seat per month. Dell’s PCaaS Solution has a flexible structure that allows customers to tailor the right type of hardware, software and level of services to their environment. In addition to giving ordering activities end-users flexibility in choosing hardware, software and services, PCaaS will provide optional flexible financing between Dell Financial Services and the ordering activity, through SIN 532420L of this FSS Contract.

1. SCOPE

a. The prices, terms and conditions stated under SIN NEW Introduction of New Supplies and New Services apply to Dell’s PC-as-a-Service (“PCaaS”) offering, within the scope of this Information Technology Schedule.

b. For PCaaS, Dell shall provide Services at the ordering activity location or other locations as set forth in the Task Order.

c. Availability of PCaaS at OCONUS locations may vary significantly. Ordering activities are encouraged to check availability with Dell’s PCaaS Sales Representatives.

2. END USER OPTIONS

a. Systems currently available for PCaaS under the Contract are Dell’s Government-wide Strategic Solutions (“GSS”) configurations. The GSS solutions, consisting of Latitude notebooks, OptiPlex desktops and Precision workstations, are available on *GSA Advantage* at the link below:

<https://www.gsaaadvantage.gov/advantage/s/search.do?q=0:2Dell+GSS+V3&db=0&searchType=0>

b. At a minimum, a PCaaS solution must include a minimum of 100 systems, **plus** one level of co-terminus support **plus** one additional service (i.e. Basic Deploy, ProDeploy, ProDeploy Plus, Asset Recovery OR Service Delivery Manager), all of which are available on this Contract.⁹ Services descriptions are available under their applicable SIN sections of this AFSSPL.

Configuration (minimum 100 units)	Co-terminus Support (choose one)	Services (choose at least one)
OptiPlex	Basic Support	Basic Deployment
Latitude	ProSupport	ProDeploy
Precision	ProSupport Plus	ProDeploy Plus
XPS		Asset Recovery
		Services Delivery Manager

3. SERVICE DESCRIPTIONS. The PCaaS service suite consists of a collection of PC lifecycle services, which address deployment, support, management and asset recovery, as selected by the ordering activity. These services will have unique associated service descriptions that are set forth on www.dell.com/servicecontracts/global¹⁰. Ordering activities have the option to select the right level of these services to best match end-user lifecycle needs. Some of the Service options may require the execution of a SOW that will provide additional detail associated with the delivery of a specific service.

⁹ A PCaaS solution that does not include these minimum requirements will be considered a lease under SIN 532420L.

¹⁰ These, as well as all other Dell online service agreements and warranties are “Commercial Supplier Agreements.”

4. SOLUTION PRICING

a. Similar to SIN 54151S Information Technology 54151S Information Technology Professional Services, it is expected that many PCaaS Task Orders will be unique, given each end-user mission is unique. Dell has developed a standard PCaaS Solution offering, consisting of the Dell GSS solution, software, tied/professional/managed services, at a single per “seat” price, for a specific term. All of the components of the PCaaS Solution are available on the Contract under its applicable SIN. These standard offerings are included in Appendix C to this AFSSPL. PCaaS solutions other than those in Appendix C may be available, and if so, will be provided upon request, consistent with this AFSSPL.

b. Appendix C.1 pricing and products are updated on a quarterly basis, consistent with the Contract’s EPA, price reduction, and product/services update provisions. Please refer to Appendix E, Optional Supplemental PCaaS Terms, for additional optional provisions that, if adopted, may impact the usage rate.

5. PCaaS ORDERING / MINIMUM REQUIREMENTS

a. The ordering activity Task Order will include the name of the Service(s) and available service options purchased. The Task Order describes all of the respective obligations and responsibilities of Dell and the ordering activity related to the Service and any other applicable services. Additional assistance is available from the Dell PCaaS sales representative or Account Executive assigned to the ordering activity.

b. The ordering activity will be required to include a minimum level of deployment, support, Services Delivery Manager and asset recovery services. These minimum levels will enable Dell to simplify the refresh process as well as an enhanced asset tracking knowledge to facilitate support and retrieval of those assets. The minimum levels of deployment, support, Services Delivery Manager and asset recovery services vary by hardware product. The Dell PCaaS Sales Representative will provide additional information upon request.

c. Unit Minimum. Ordering activities will be subject to two separate unit minimum requirements: 1) as stated in subparagraph 2.b above, ordering activities must purchase PCaaS to cover the mandatory minimum services for at least one hundred (100) units, when all ordering activities systems that would be entitled to PCaaS are aggregated together throughout the end-user’s enterprise-wide environment; and 2) each ordering activity request to deploy new systems or retrieve end of term / flex down early termination, including asset recovery services, as applicable, must have at least twenty (20) units. If ordering activity falls below either unit minimum threshold, Dell may elect to waive enforcement of this term in order to allow the ordering activity to restore its unit minimum(s), but such waiver does not prohibit Dell from enforcing these unit minimum requirements at any future date.

i. System quantity increase and decrease flexibility (5%, 10% and 15%) is available after the mid-point of the task order is available.¹¹ Installed system upgrades are available in a similar manner. Then-current offer particulars are available from your PCaaS Sales Representative.

d. Term. Offered PCaaS Solution terms are 36 or 48 months. Alternate terms are available upon mutual agreement of the parties, however such non-standard terms may result in monthly per seat pricing higher than the comparable standard term pricing.

e. Usage Options. The usage portion of this offer will offer two optional features that improve flexibility for the ordering activity and differentiate from a typical hardware lease agreement. This optional features are as follows:

i. Flex Down – This feature allows the ordering activity the ability to reduce the overall number of assets (PCs) under the contract by a predetermined amount without penalty or fees, keeping the price per PC per month consistent throughout the term of the agreement. The percent that the ordering activity is able to “Flex down” must be established at the time the contract is initially signed and will be specified in the ordering activity’s agreement with Dell or such other DFS master sales terms, as applicable. Dell will also require a minimum length of term that the ordering activity must commit to prior to executing any “flex down” of units.

¹¹ Ordering activities designate the flex percentages at the time of initial task order negotiation and award. Mid-point increase and decreases are limited to the agreed upon value, or lower

- ii. Mid-Term Upgrade – This feature enables the ordering activity to upgrade a predetermined percent of their hardware assets (PCs) within the term of the agreement rather than waiting until the end of the term. The percent that the ordering activity is able to “upgrade” must be established at the time the applicable Dell Financial Services usage contract is initially signed under which the ordering activity will purchase the Services. Dell would require a minimum length of term at the time such contract is signed that must expire before the ordering activity’s assets can become eligible for any upgrades.

6. INVOICING and PAYMENT

PCaaS Solutions shall be invoiced monthly, or in a frequency as otherwise agreed upon by Dell and the ordering activity, consistent with applicable provisions of this AFSSPL.

7. ADDITIONAL TERMS AND CONDITIONS

If the PCaaS solution includes i. Leasing of Product, the provisions of SIN 532420L above apply, and the Appendix D Optional Supplemental Lease Terms may apply to the extent the parties agree; and/or ii. Classified work, secure support or a requirement for U.S. citizens only, Dell will team this GSA Schedule with the Dell Federal Systems L.P. Schedule 70, GS-35F-0884P, under which performance of the classified portion will occur.

**TERMS AND CONDITIONS APPLICABLE TO ORDER-LEVEL MATERIALS
(SPECIAL ITEM NUMBER OLM)**

1. Order-Level Materials

- a. Order-Level Materials (OLMs) are supplies and/or services acquired in direct support of an individual task or delivery order placed against this Contract or a blanket purchase agreement (BPA) hereunder. OLMs are not defined, priced, or awarded at the FSS contract level. They are unknown before a task or delivery order is placed against this Contract or BPA.
- b. OLMs are only authorized for inclusion at the order level under a Time-and-Materials (T&M) or Labor-Hour (LH) Contract Line Item Number (CLIN) and are subject to a Not To Exceed (NTE) ceiling price. OLMs include direct materials, subcontracts for supplies and incidental services for which there is not a labor category specified in the FSS contract, other direct costs (separate from those under ODC SINs), and indirect costs.
- c. OLMs are purchased under the authority of the FSS Program and are not "open market items." Acceptance of this modification indicates your agreement to the following terms:
- d. Items awarded under ancillary supplies/services or other direct cost (ODC) SINs are not OLMs (see paragraph 17 of the Information for Ordering Offices section above). These items are defined, priced, and awarded at the FSS contract level, whereas OLMs are unknown before an order is placed. Ancillary supplies/services and ODC SINs are for use under all order type CLINs (Fixed- Price (FP), T&M, and LH), whereas the Order-Level Materials SIN is only authorized for use under T&M and LH order CLINs.

2. Miscellaneous

- a. The Order-Level Materials SIN is only authorized for use in direct support of another awarded SIN on the Contract. Price analysis for OLMs is not conducted when awarding the FSS contract or FSS BPA; therefore, GSAR 538.270 and 538.271 do not apply to OLMs. OLMs are defined and priced at the ordering activity level in accordance with GSAR clause 552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials (MAY 2019).
- b. GSAR clauses GSAR 552.212-4 Contract Terms and Conditions- Commercial/Items (JAN 2017) (Deviation- FEB 2018) (Alternate I- JAN 2017) (Deviation- FEB2007) and 552.238-115 Special Ordering Procedures for the Acquisition of Order- Level Materials (MAY 2019) provide additional information on inclusion of OLMs in task and delivery orders placed against this FSS Contract or a BPA hereunder
- c. OLMs are only authorized for inclusion at the order level under a T&M or LH CLIN and are subject to an NTE ceiling price.
- d. This SIN contains no items or pricing since by definition OLMs are unknown at the time of FSS contract award. The ordering activity contracting officer is responsible for defining OLMs and determining proposed OLM pricing fair and reasonable for a particular order. To support that determination, Dell will provide three quotes for each OLM, consistent with the requirements of 552.238-115(d)(7).
- e. The OLM SIN cannot be the only SIN awarded on a contract as it is only authorized for use in direct support of another awarded SIN.
- f. This SIN is exempt from Commercial Sales Practices disclosure requirements, if required.
- g. This SIN is exempt from the following clauses:
- 552.216-70 Economic Price Adjustment- FSS Multiple Award Schedule Contracts
 - 1-FSS-969 Economic Price Adjustment- FSS Multiple Award Schedule
 - 552.238-71 Submission and Distribution of Authorized FSS Schedule
 - Pricelists, 552.238-75 Price Reductions

h. Terms and conditions that otherwise apply to the Contract also apply to the OLM SIN. Examples include but are not limited to:

- Trade Agreements Act (TAA)
- Sales reporting and IFF remittance
- Environmental Attributes clauses
- AbilityOne Program Essentially the Same (ETS) compliance

j. This SIN is subject to any transactional data reporting (TDR) requirements in effect under the Contract.

k. Prices for items provided under this SIN must be inclusive of the Industrial Funding Fee (IFF). The cumulative value of OLMs in an individual task or delivery order **cannot exceed 33.33% of the total value of the order**. Note that travel costs do not count towards the 33.3% limitation.

COUNTRY OF ORIGIN / WARRANTY CODES

1. Country of Origin. On the Contract price list, the country of origin is identified in the column named “Country of Origin” through a two-digit alpha code. The table below defines the two digit alpha codes, i.e. the country or origin listed in the corresponding Country of Origin column of the table:

Alpha Code	Country of Origin
AN	Netherlands
CA	Canada
CH	Switzerland
DE	Germany
FI	Finland
GB	United Kingdom
HK	Hong Kong
IE	Ireland
IL	Israel
JP	Japan
KR	Korea
MX	Mexico
PE	Peru
PL	Poland
RO	Romania
SG	Singapore
TW	Taiwan
US	United States

2. Warranty Term. On the Contract price list, the warranty term is defined in the column named “Warranty Code” through a one digit alpha code. The table below defines that alpha code. (Please note that the Contract price list column named “Warranty” is merely a combination of the Country of Origin and Warranty Code.)

Warranty Code	Warranty Term
0	No Warranty
C	Ninety-days
E	One-year
G	Two-years
J	Three-years

USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION PROCUREMENT PROGRAMS PREAMBLE

Dell provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

- To actively seek and partner with small businesses.
- To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.
- To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.
- To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.
- To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.
- To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.
- To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. Please visit Dell Technologies' Supplier Diversity home page <https://corporate.delltechnologies.com/en-us/social-impact/advancing-sustainability/sustainable-supply-chain/supplier-diversity.htm> for additional information and contact information.

**BEST VALUE BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE**

(Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s)_____.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

AGENCY

DATE

CONTRACTOR

DATE

BPA NUMBER_____

(CUSTOMER NAME)
BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s) _____ ("Agreements"), the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (Ordering Agency):

1. The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

MODEL NUMBER/PART NUMBER	*SPECIAL BPA DISCOUNT/PRICE
_____	_____
_____	_____

2. Delivery:

DESTINATION	DELIVERY SCHEDULE/DATES
_____	_____
_____	_____

3. The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be _____.

4. This BPA does not obligate any funds.

5. This BPA expires on _____ or at the end of the contract period, whichever is earlier.

6. The following activity(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
_____	_____
_____	_____

7. Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

8. Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- a. Name of contractor;
- b. Contract Number;
- c. BPA Number;
- d. Model Number or National Stock Number (NSN);
- e. Purchase Order Number;
- f. Date of Purchase;
- g. Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- h. Date of Shipment.

9. The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

10. The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

BASIC GUIDELINES FOR USING "CONTRACTOR TEAM ARRANGEMENTS"

Federal Supply Schedule Contractors may use "Contractor Team Arrangements" (see FAR 9.6) to provide solutions when responding to a customer agency requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions of the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customer's needs, or -
- Federal Supply Schedule Contractors may individually submit a Schedules "Team Solution" to meet the customer's requirement.
- Customers make a best value selection.

APPENDIX A
DELL ENTERPRISE LICENSE AGREEMENT



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APPENDIX B MASTER SERVICES ADDENDUM

This MASTER SERVICES ADDENDUM (the "**Addendum**") is incorporated into Delivery Orders for Professional Services and Factory Integration Services procured by the Government under the FSS Contract.

1. SERVICES

This Addendum shall apply each time Government engages Dell to provide services under any FSS Contract Special Item Number. All services provided will be described in one or more of the following: (i) "**Service Descriptions**" in the GSA Schedule; (ii) mutually agreed "**Statement of Work**" ("**SOW**"); or (iii) "**Technical Specification Form**" as applicable (the "**Services**"). In the event of a conflict between the terms of this Agreement and a Service Description, SOW, or Technical Specification Form, the terms of these documents will be followed according to the following order of preference: (1) GSA Schedule; (2) the SOW or Technical Specification Form; and (3) Service Descriptions.

2. TERMS

a. Requests for Service; Quotes and Delivery Orders. All Delivery Orders for Services must specify Dell's quotation (if any), and reference the Service(s) requested and invoice address. The Government may place Delivery Orders in writing, by telephone or by facsimile transmission. Telephone Delivery Orders must be confirmed in writing. All Delivery Orders are subject to acceptance by Dell, which will not be unreasonably withheld.

c. The prices charged for Services purchased under this Addendum will be Dell's then current GSA price for such Services or as otherwise negotiated between Dell and Government. If the Services are being performed on a time and materials basis, any estimates provided by Dell are for planning purposes only.

3. PURCHASE OF THIRD PARTY PRODUCTS, SOFTWARE INSTALLATION

"Third Party Products" means any hardware or software, other than parts that are Dell branded and originally listed on Dell's standard parts lists ("**Dell Standard Products**"), that are used in the Services, whether provided by Government or procured for Government by Dell. Government shall be responsible for procuring any Third Party Products used in the Services; however Government may request that Dell procure the Third Party Products. In the event the Third Party Products procured by Dell are not used for the Services within a reasonable time following purchase of the parts by Dell, the Third Party Products will be shipped and invoiced to Government and Government will pay for these parts within thirty (30) days after the date of invoice. Dell is not responsible for any revision or engineering changes in any Third Party Products used in the Services. For software provided by Government, Government authorizes Dell (or otherwise obtains the rights for Dell) to copy, install and modify, if necessary (and required by the Technical Specification Form), all software to be used in the Services or to be recorded in electronic media for subsequent re-installation of backup. Government warrants to Dell that it has obtained any licenses, consents, or approvals required to give Dell and its subcontractors or employees the right or license to access, copy, distribute, use and/or modify (including creating derivative works) any Third Party Products and custom software to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products

4. PROPRIETARY RIGHTS

a. Subject to b. below, right, title and interest in and to any programs, systems, data or materials first created or prepared by Dell under this Agreement including, without limitation, any copyrights, patents, and other intellectual property rights therein, shall vest in the Government in accordance with FAR 52.227-14 Rights in Data – General, where such work is specifically identified by CLIN on the Delivery Order as deliverable data or restricted computer software. Government rights in data and restricted computer software not separately called out under a Delivery Order CLIN, if any, shall be in accordance with FAR Part 12.

b. The Government acknowledges that from time-to-time Dell develops certain reusable computer software, techniques, information, training material and documentation ("**Utilities**"). Utilities are Dell's proprietary information and intellectual property. To the extent consistent with FAR 52.227-14, Dell grants the Government Purpose Limited Rights to use those Utilities incorporated into the products developed for the Government. Subject to the

foregoing, Dell retains all rights to the Utilities for any future use. The Government shall protect the Utilities according to the policies and procedures it uses for its own similar proprietary information and intellectual property.

5. EXPORT; REGULATORY REQUIREMENTS.

a. Export. Government warrants that any software provided by Government and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export under Bureau of Export Administration export license exception GOV.

b. Regulatory Requirements. Dell shall not be under any obligation to perform any Service Description, SOW or Technical Specification Form or to install any Third Party Products as part of the Services or proceed with Services if such Third Party Products, or the resulting software, do not satisfy the local regulatory requirements of the country to which the Products are to be shipped.

6. GOVERNMENT RESPONSIBILITIES

It is the Government's responsibility to backup data on its systems. DELL IS NOT RESPONSIBLE FOR LOSS OF OR DAMAGE TO DATA OR LOSS OF USE OF ANY OF THE GOVERNMENT'S COMPUTER OR NETWORK SYSTEMS. Government acknowledges that Dell's performance and delivery of the Services are contingent upon: (i) Government providing access to its personnel, facilities, equipment, hardware, software, network and information and (ii) Government's timely decision-making, notification of relevant issues or information and granting of approvals and/or permission. Government will promptly obtain and provide to Dell any required consents necessary for Dell's performance of the Services described in the applicable Service Description, SOW or Technical Specification Form. Government agrees that any information or data disclosed or sent to Dell, over the telephone, electronically or otherwise, is not confidential or proprietary to Government, unless disclosed pursuant to a mutual NDA executed by the Parties. Some Services may require Dell to access hardware or software that is not manufactured by Dell. Some manufacturers' warranties may become void if Dell or its authorized representative, works on the hardware or software. DELL TAKES NO RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON SAME.

7. LIMITATION OF SERVICES

Except as stated below, when Services consist of repair of Dell systems, such Services shall be those repair services that are necessary because of any existing defect or a defect occurs in materials or workmanship in the system or in any system component covered by this Agreement. Preventive maintenance is not included. **Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included.** Unless otherwise provided in the SOW, Services do not include repair of any system or system component which has been damaged as a result of: (i) accident, misuse, or abuse of the system or component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives), (ii) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (iii) the moving of the system from one geographic location to another or from one entity to another.

APPENDIX C PRICE LIST

1. Price List. Dell's Price list is a SKU-based list, consisting of over 300,000 SKUs. Dell's products are available on GSA Advantage ®, however due to the volume of SKU's it is sometimes difficult to find a particular SKU; and Advantage may be slightly out of date at times as a result of occasional issues with the EDI upload.
2. Dell's Price List consists of the separate Excel files listed below listed in 2.a. below; and 2.b. PCaaS Price List.
 - a. Given the size of the files and the rapidity in which pricing changes, Dell no longer publishes a hard copy price list. All or part of the price list is available electronic form on CDROM, and if the ordering activity is capable of receiving a file in excess of 18 MB, available via email. Please contact the Dell GSA Point of Contact listed on GSA's *e-schedule library* site to request a copy:
 - Dell-Branded Products / After Point of Sale (APOS) Warranty Services
 - Professional Services (fixed price SKU-based)
 - Third Party Products (aka Software and Peripherals)
 - b. PC as a Service. Please Refer to Appendix C.1

Appendix C.1 PCaaS Price List

October 2, 2018

USAGE PROGRAM:				USAGE Pricing					
Quote	Equipment		Unit Price	Qty.	Total Amount Financed	Payment Frequency	Contract Term (months)	Payment Factor	Price Per Seat Payments (Advance)*
Good									
744151388	LightWeight Laptop:	Latitude 5290	\$1,441.85	1	\$ 1,441.85	Monthly	36	0.02977	\$42.92
743693679	Basic Laptop:	Latitude 5490	\$1,404.82	1	\$ 1,404.82	Monthly	36	0.02977	\$41.82
744986239	High End Laptop:	Precision 7520	\$2,169.70	1	\$ 2,169.70	Monthly	36	0.02962	\$64.27
744987963	Desktop Upgrade 1 SFF:	Optiplex 7050SFF	\$1,019.82	1	\$ 1,019.82	Monthly	36	0.02977	\$30.36
745004462	Desktop MiniTower:	Optiplex 7050MT	\$1,257.18	1	\$ 1,257.18	Monthly	36	0.03017	\$37.93
745004498	High End Desktop:	Precision Tower 3620	\$1,652.94	1	\$ 1,652.94	Monthly	36	0.03017	\$49.87
744163293	Tablet:	Latitude 5290 2 n 1	\$1,644.25	1	\$ 1,644.25	Monthly	36	0.03017	\$49.61
Better									
744151408	LightWeight Laptop:	Latitude 5290	\$1,471.62	1	\$ 1,471.62	Monthly	36	0.02982	\$43.88
744151663	Basic Laptop:	Latitude 5490	\$1,508.82	1	\$ 1,508.82	Monthly	36	0.02982	\$44.99
744987074	High End Laptop:	Precision 7520	\$2,199.43	1	\$ 2,199.43	Monthly	36	0.02967	\$65.26
744987974	Desktop Upgrade 1 SFF:	Optiplex 7050SFF	\$1,049.56	1	\$ 1,049.56	Monthly	36	0.02982	\$31.30
745004466	Desktop MiniTower:	Optiplex 7050MT	\$1,286.96	1	\$ 1,286.96	Monthly	36	0.03022	\$38.89
745004520	High End Desktop:	Precision Tower 3620	\$1,682.68	1	\$ 1,682.68	Monthly	36	0.03022	\$50.85
744163373	Tablet:	Latitude 5290 2 n 1	\$1,674.00	1	\$ 1,674.00	Monthly	36	0.03022	\$50.59
Best									
744151422	LightWeight Laptop:	Latitude 5290	\$1,587.55	1	\$ 1,587.55	Monthly	36	0.02999	\$47.61
744151689	Basic Laptop:	Latitude 5490	\$1,624.77	1	\$ 1,624.77	Monthly	36	0.02999	\$48.73
744987129	High End Laptop:	Precision 7520	\$2,385.07	1	\$ 2,385.07	Monthly	36	0.02987	\$71.24
744987987	Desktop Upgrade 1 SFF:	Optiplex 7050SFF	\$1,105.60	1	\$ 1,105.60	Monthly	36	0.02999	\$33.16
745004473	Desktop MiniTower:	Optiplex 7050MT	\$1,342.97	1	\$ 1,342.97	Monthly	36	0.03030	\$40.69
745004536	High End Desktop:	Precision Tower 3620	\$1,750.87	1	\$ 1,750.87	Monthly	36	0.03030	\$53.05
744163401	Tablet:	Latitude 5290 2 n 1	\$1,789.94	1	\$ 1,789.94	Monthly	36	0.03030	\$54.24

***Pricing Assumes No interim rent. Payments do not include sales tax. Included is estimated national average personal property**

USER AGENCY: Activity Ordering Officer

LESSOR: Dell Financial Services LLC, and/or its successors and assigns.axes.

PCaaS QUOTE: The PCaaS Quote is exclusive of shipping costs, maintenance fees, filing fees, licensing fees, property or use taxes, insurance premiums and similar items which shall be for User Agency's account. User Agency will pay Payments and all other amounts without set-off, abatement or reduction for any reason whatsoever. Additionally, User Agency shall declare and pay all sales, use and personal property taxes to the appropriate taxing authorities. If you are sales tax exempt, please fax a copy of your Exemption Certificate with the PCaaS Contract.

PURCHASE ORDER: The Purchase Order will be made out to Dell Financial Services, One Dell Way, RR3 Box 8405, Round Rock, TX 78682. The Purchase Order will include the quote number, quantity and description of the equipment. Please be sure to indicate that the PO is for a PCaaS order and shows the type of PCaaS, the term length, and payment frequency. The date of the PCaaS quote referenced should be included. Please be sure to include any applicable shipping costs as a line item. Please include your address as the SHIP TO destination

APPENDIX D
OPTIONAL SUPPLEMENTAL LEASE TERMS

As authorized by Option 2 of SIN 532420L, Dell proposes the following Supplemental Lease Terms for Ordering Activity consideration:

Supplemental Terms and Conditions

There are in addition to the terms and conditions included in Dell's GSA Contract # GS-35F-059DA.

The ordering activity is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the lease terms and conditions contained in this quote prior to ordering and obligating funding for a lease.

1. Base Interest Rates in the GSA Leasing Terms and Conditions are indexed to Treasury constant maturities as quoted in the Federal Statistical Release H.15 (519) as of the preceding date closest to the date of the Lease Quote.

2. This Lease quote is valid for thirty (30) days from the date of the Lease Quote. In the event an order is not issued by the Government within such thirty (30) days, Dell reserves the right to re-quote the lease pricing or extend the original quote in writing. The Delivery Order issued to initiate a lease based on this Lease Quote must be in compliance with GSA SIN 532420L, Option 2, of the referenced GSA Contract. A lease order issued hereunder is subject to Dell acceptance and/or Dell's credit approval.

3. The Government agrees that early termination is highly unlikely because the acquisition, quantity and use of the involved products are deemed to be essential to its operations and will complete an Essential Use Certificate to that effect if required by Lessor. Further, the Government reasonably believes that funds in an amount sufficient to make all payments during the Lease Term can be obtained and agrees to take all reasonable positive action to obtain and maintain such funds. This proposed lease is subject to Credit Approval by the Lessor's Credit Review Committee Except for any maintenance-responsibilities included in the Lease, the Government agrees that, by accepting the Lease and providing the Product for the Government's use, Dell has fully performed its obligation under the Lease.

4. Termination for Convenience of the Government: Leases entered into under this option may not be terminated except by the ordering activities' contracting officer responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (I), Termination for Convenience of the Government. In the event of a Termination for Convenience of the Government, the Government will promptly pay Dell, or its assignee, the following: i) the sum of the current fiscal year's payment obligations, including any applicable taxes, less any payments made to the date of termination; plus ii) the Termination Ceiling, which will be the present value of the remaining Lease Payments over the Lease Term discounted at the like-term Treasury yield % used to calculate the periodic Lease Payments, interpolated to the number of months remaining in the Lease Term, plus any unpaid taxes or other charges then due.

5. Notwithstanding the provisions of SIN 532420L, for Leases with the Option to Own - Fair Market Value end of lease purchase option, the purchase option available to the Government at the end of the Lease Term shall be based on the then current Fair Market Value. The Government understands that it accrues no equity or partial ownership to the products by virtue of Lease Payments paid hereunder. The Fair Market Value shall be determined by Dell, or its assignee, on the basis of and shall be the value which would be obtained in an arm's length transaction between an informed and willing buyer and an informed and willing seller under no compulsion by either party to perform the transaction.

6. Dell, or its assignee, will invoice, and the Government agrees to pay such periodic Lease payments in accordance with Section 2 / Payment Schedule as incorporated in your Lease Quote, prior to the beginning of the

period for which the charges accrue. For Prompt Payment Act provisions, all invoices are due upon receipt of invoice, and are payable not later than the payment due date listed on the invoice or the 30th day from the start of the payment period in accordance with the Prompt Payment Act provisions 5 CFR Part 1315.4g and FAR 52.232-25. Prompt Payment Act (1315.10) interest penalties shall apply for all payments not made in accordance with this clause.

7. Products may only be terminated at the Delivery Order level in accordance with the termination provisions set forth in SIN 532420L. In the event the Government exercises its right to terminate a lease under SIN 532420L, the Government shall be required to return all the products included in the Delivery Order to Contractor in accordance with the return provisions set forth therein. The end of lease purchase option is available to the Government only upon satisfaction of all payment obligations for the full Lease Term and is not applicable to a lease termination prior to the end of the Lease Term.

8. It is the Government's intent to exercise each renewal option and to extend the lease until completion of the Lease Term provided the needs of the Government for the products or functionally similar products continue to exist. Accordingly, the Government shall not replace the products leased under this delivery order with functionally similar products during the Lease Term specified in the delivery order. For purposes of this clause, replacement includes reverting to the means by which the Government met the bona fide functional need before the Government issued the Order.

9. In the event you are of the opinion that any charges or credits on an invoice are not billed properly, the Government will promptly pay the portion of the invoice not in question and immediately provide Dell, or its assignee, with detailed written notice of the items in question.

10. To the extent permitted by the Agency Federal Acquisition Regulation supplement of the ordering activity, FAR Clause 52.232-23, Assignment of Claims, Alternate I, is hereby incorporated by reference. Payments to an Assignee of any amounts due or to become due under this lease, shall not, to the extent specified in the Act, be subject to reduction or setoff.

11. Purchase Option - In the event the Government wishes to buy-out the lease at any time, during or at the end of the Lease Term, the Government will be required to pay a lump sum amount equal to the present value of all outstanding Lease Payments discounted at the rate of Treasury Constant Maturities as published in the Federal Reserve statistical release H.15 in effect at the time of the original order, interpolated to the number of months remaining in the Lease Term, plus any applicable end of lease purchase option, Fair Market Value or pre-stated purchase option price, and any unpaid taxes or other charges then due. The election to purchase at the end of the Lease Term shall require purchase of all of the leased Products included in the Delivery Order. The end of the lease option elected by the Government shall be the same for all of the products included in the Delivery Order.

12. Form of Payment: The Government will pay Dell, or its assignees, by Electronic Funds Transfer (EFT), wire or check. No credit cards will be allowed as a form of payment under this lease agreement.

13. Acceptance: Acceptance shall occur on the first day after delivery of the product to the Government.

14. Risk of Loss: The Government assumes and shall bear the entire risk of loss and damage, whether or not insured against, to the products from any and every cause whatsoever from the date the products are delivered to the Government's ship to location until the products are either returned to the Contractor's designated return location or purchased by the Government, except for any loss or injury resulting from the negligence or fault of Contractor. No loss or damage to the products or any part thereof shall impair any obligation of the Government under the relevant Order, including but not limited to the Government's obligation to make payments under such Order, which obligations shall continue in full force and effect. In the event of loss or damage of any kind to any products, the Government, at the Government's option, shall: (i) Place the same in good repair, condition and working order to the satisfaction of Contractor within 90 days of such loss or damage; or (ii) Pay Contractor the amount equivalent to the Purchase Option price calculated as described in Paragraph 11 above.

15. Title: During the Lease Term, products shall always remain the property of the Contractor. The Government shall have no property right or interest in the products except as provided herein and shall hold the products subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The Government shall have no right or interest in the software and related documentation except as provided in the license and the lease. Upon the Commencement Date of the Lease Term, the Government shall have an encumbered license to use the software for the Lease Term. The Government's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the Government will not have an unencumbered, paid-up license until it has paid the applicable purchase option price.

Unless otherwise agreed to in writing by the parties, the above supplements Dell's GSA SIN 532420L and apply to any lease entered into by the parties.

APPENDIX E
OPTIONAL SUPPLEMENTAL PCAAS TERMS

Dell proposes the following Supplemental PCaaS Terms under SIN NEW for Ordering Activity consideration:

Supplemental Terms and Conditions

These Supplemental PCaaS Terms and Conditions are in addition to the terms and conditions included in Dell's GSA Contract # GS-35F-059DA.

The ordering activity is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the PCaaS terms and conditions contained in a PCaaS quote prior to ordering and obligating funding for a PCaaS usage agreement ("Usage Agreement").

1. Base Rates in the GSA PCaaS Terms and Conditions are indexed to Treasury constant maturities as quoted in the Federal Statistical Release H.15 (519) as of the preceding date closest to the date of the PCaaS Quote.
2. This PCaaS quote is valid for thirty (30) days from the date of the PCaaS Quote. In the event an order is not issued by the Government within such thirty (30) days, Dell reserves the right to re-quote the pricing or extend the original quote in writing. The Delivery Order issued to initiate a Usage Agreement based on this PCaaS Quote must be in compliance with GSA SIN NEW, A PCaaS order issued hereunder is subject to Dell acceptance and/or Dell's credit approval.
3. The Government agrees that early termination of the Usage Agreement is highly unlikely because the acquisition, quantity and use of the involved products are deemed to be essential to its operations and will complete an Essential Use Certificate to that effect if required by Dell or the Usage Payee. Further, the Government reasonably believes that funds in an amount sufficient to make all payments during the Usage Term can be obtained and agrees to take all reasonable positive action to obtain and maintain such funds. This proposed Usage Agreement is subject to Credit Approval by the Usage Payee's Credit Review Committee. Except for any maintenance-responsibilities included in the Usage Agreement, the Government agrees that, by accepting the Usage Agreement and providing the product for the Government's use, Dell has fully performed its obligation under the Usage Agreement.
4. Termination for Convenience of the Government: Usage Agreements entered into under this option may not be terminated except by the ordering activities' contracting officer responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (I), Termination for Convenience of the Government. In the event of a Termination for Convenience of the Government, the Government will promptly pay the Usage Payee, or its assignee, the following: i) the sum of the current fiscal year's payment obligations, including any applicable taxes, less any payments made to the date of termination; plus ii) the Termination Ceiling, which will be the present value of the remaining Usage Agreement Payments over the PCaaS Term discounted at the like-term Treasury yield % used to calculate the periodic Payments, interpolated to the number of months remaining in the Usage Agreement term ("Term"), plus any unpaid taxes or other charges then due.
5. Notwithstanding the provisions of SIN NEW, the PCaaS Usage Agreement does not automatically contemplate a purchase option at the end of the Term. Any purchase option will be mutually agreed to by the parties at the end of Term, based on the Government having made all outstanding payments due and owing under the Usage Agreement through the end of the Term and by paying to Usage Payee the then current Fair Market Value of the products. The Government understands that it accrues no equity or partial ownership to the products by virtue of PCaaS Payments paid hereunder. The Fair Market Value shall be determined by Dell, or its assignee, on the basis of and shall be the in-place value which would be obtained in an arm's length transaction between

an informed and willing buyer and an informed and willing seller under no compulsion by either party to perform the transaction.

6. Dell, or its assignee, the Usage Payee will invoice, and the Government agrees to pay such periodic PCaaS Payments in accordance with the Payment Schedule incorporated in your PCaaS Quote, prior to the beginning of the period for which the charges accrue. For Prompt Payment Act provisions, all invoices are due upon receipt of invoice, and are payable not later than the payment due date listed on the invoice or the 30th day from the start of the payment period in accordance with the Prompt Payment Act provisions 5 CFR Part 1315.4g and FAR 52.232-25. Prompt Payment Act (1315.10) interest penalties shall apply for all payments not made in accordance with this clause.

7. Products may only be terminated at the Delivery Order level in accordance with the termination provisions set forth in SIN NEW. In the event the Government exercises its right to terminate a Usage Agreement under SIN NEW, the Government shall be required to return all the products included in the Delivery Order to Contractor in accordance with the return provisions set forth therein. Any purchase option is available to the Government only upon satisfaction of all payment obligations for the full Usage Agreement's Term and is not applicable to a termination prior to the end of the Term.

8. It is the Government's intent to exercise each renewal option and to extend the Usage Agreement until completion of the Term provided the needs of the Government for the products or functionally similar products continue to exist. Accordingly, the Government shall not replace the products under this delivery order with functionally similar products during the Term specified in the delivery order. For purposes of this clause, replacement includes reverting to the means by which the Government met the bona fide functional need before the Government issued the PCaaS Order.

9. In the event the Government is of the opinion that any charges or credits on an invoice are not billed properly, the Government will promptly pay the portion of the invoice not in question and immediately provide Dell, or its assignee, the Usage Payee with detailed written notice of the items in question.

10. To the extent permitted by the Agency, Federal Acquisition Regulation ("FAR") supplement of the ordering activity, FAR Clause 52.232-23, Assignment of Claims, Alternate I, is hereby incorporated by reference. Payments to an Assignee of any amounts due or to become due under this lease, shall not, to the extent specified in the Act, be subject to reduction or setoff.

11. Purchase Option - In the event the Government wishes to buy out the products at any time, during or at the end of the Term, the Government will be required to pay a lump sum amount equal to the present value of all outstanding PCaaS Payments discounted at the rate of Treasury Constant Maturities as published in the Federal Reserve statistical release H.15 in effect at the time of the original order, interpolated to the number of months remaining in the Term, plus the Fair Market Value purchase price, and any unpaid taxes or other charges then due. The election to purchase at the end of the Term shall require purchase of all of the products included in the Delivery Order. The end of Term option elected by the Government shall be the same for all of the products included in the Delivery Order.

12. Form of Payment: The Government will pay Dell, or its assignees, by Electronic Funds Transfer (EFT), wire or check. No credit cards will be allowed as a form of payment under this Usage Agreement.

13. Acceptance: Acceptance shall occur on the first day after delivery of the product to the Government.

14. Risk of Loss: The Government assumes and shall bear the entire risk of loss and damage, whether or not insured against, to the products from any and every cause whatsoever from the date the products are delivered to the Government's ship to location until the products are either returned to the Contractor's designated return location or purchased by the Government, except for any loss or injury resulting from the negligence or fault of Contractor. No loss or damage to the products or any part thereof shall impair any obligation of the Government under the relevant Order, including but not limited to the Government's obligation to make payments under such Order, which obligations shall continue in full force and effect. In the event of loss or damage of any kind to any

products, the Government, at the Government's option, shall: (i) Place the same in good repair, condition and working order to the satisfaction of Contractor within 90 days of such loss or damage; or (ii) Pay Contractor the amount equivalent to the Purchase Option price calculated as described in Paragraph 11 above.

15. Title: During the Term, products shall always remain the property of the Contractor. The Government shall have no property right or interest in the products except as provided herein and shall hold the products subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The Government shall have no right or interest in the software and related documentation except as provided in the license and the Usage Agreement. Upon the Commencement Date of the Usage Agreement Term, the Government shall have an encumbered license to use the software for the Term. The Government's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the Government will not have an unencumbered, paid-up license until it has paid the applicable purchase option price.

Unless otherwise agreed to in writing by the parties, the above supplements Dell's GSA SIN NEW and apply to any PCaaS Usage Agreement entered into by the parties.

APPENDIX F
DELL BRANDED AND DELL EMC BRANDED COMMERCIAL AND PUBLIC SECTOR WARRANTIES



**Dell Branded
Product Limited Wai**



**Dell EMC Branded
Product Warranty.p**

APPENDIX G
SUPPLEMENTARY TERMS FOR INFRASTRUCTURE PRODUCTS

These Supplementary Terms for Infrastructure Products ("**Supplementary Terms**") apply specifically to the Ordering Office ("Customer" or "you") purchase of Infrastructure Products (as defined below) from Dell Marketing L.P. ("Dell"). If there is a conflict between these Supplementary Terms and the Contract regarding Infrastructure Products, these Supplementary Terms shall prevail.

1. DEFINITIONS

Unless otherwise expressly defined herein, all capitalized terms used in these Supplementary Terms shall have the meanings ascribed to them in the Contract. The definitions below shall also apply to the purchase and sale of Infrastructure Products.

a. "**Customer Support Tools**" means any software or other tools which Dell makes available to you enable certain service features of Infrastructure Products (as applicable) and to enable you to perform various self-maintenance activities.

b. "**Dell Service Area**" means the area that is within: (i) one hundred drivable miles of a Dell service location for Infrastructure Products; and (ii) the same country as the Dell service location.

c. "**Delivery**" for Equipment occurs when Dell provides the Equipment to a carrier at Dell's designated point of shipment. "Delivery" for Software occurs when Dell provides physical media to a Dell-designated carrier at Dell's designated point of shipment or the date Dell notifies you that Software is available for electronic download.

d. "**Documentation**" means Dell's then-current, generally available user manuals and online help for Infrastructure Products.

e. "**Equipment**" means "Dell", "EMC", or "Dell EMC"-branded hardware that Dell provides under these Supplementary Terms.

f. "**Independent Software**" means "Dell", "EMC" or "Dell EMC"-branded software that can operate on hardware other than Equipment.

g. "**Infrastructure Products**" means Equipment that comprises data storage and converged function data management products and their related Software, including but not limited to PowerMAX/VMAX, Unity, SC, Vblock, VxBlock, VxRail, Data Domain DD3300, and IDPA DP4400 Products and Independent Software (e.g., backup and recovery software). Certain Infrastructure Products (including Vblock, VxBlock and VxRail) contain components that are subject to Cisco Systems, Inc. ("Cisco") terms and conditions, and your purchase of such Infrastructure Products with Cisco components are subject to additional terms and conditions which you must agree to in writing before you may purchase such Infrastructure Products under this Contract.

h. "**Installation Site**" means the ship-to address or other location identified on Dell's quote or order confirmation or other Dell-prepared document as the Infrastructure Product site of installation, use, or both.

i. "**Maintenance Aids**" mean any hardware, software or other tools, other than Customer Support Tools, that Dell uses to perform diagnostic or remedial activities on Products.

j. "**Product Notice**" means the information related to Products and Services posted at a Dell or EMC website at the time of the Dell quote, currently located at http://www.EMC.com/products/warranty_maintenance/index.jsp. To locate the applicable information related to the SC Series Products, please see the applicable service description listed at [http://www.EMC.com/products/warranty_maintenance/index.jsp](#).
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www.dell.com/servicecontracts/global. The Product Notice informs you of Infrastructure Product-specific use rights and restrictions, unit of measure (if any), warranty periods, warranty upgrades and Support Services terms. The Product Notice in effect as of the date of Dell's quote will apply to Infrastructure Products, and is deemed incorporated into that quote and related purchase order by this reference. Upon request, Dell will provide a copy of the applicable Product Notice or attach it to the relevant quote.

k. **"Service Agreements"** means service contracts, including service descriptions available at www.dell.com/servicecontracts/global, service briefs, statements of work, services specifications and any other similar mutually agreed documents.

l. **"Software"** means "Dell", "EMC" or "Dell EMC"-branded generally available application, microcode, firmware and operating system software in object code format that is licensed by Dell or EMC.

m. **"Software Release"** means any subsequent, generally available version of Software or Independent Software provided after initial Delivery of such software, but does not mean a new product.

n. **"Support Services"** when used in these Supplementary Terms and applied to Infrastructure Products means the Services identified on the table located at <http://www.emc.com/collateral/warranty-maintenance/h4276-emc-prod-warranty-maint-table.pdf>. Support Services for SC Series Products are stated at <http://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts?c=us&l=en&s=corp>.

o. **"Labor Hour Service"** means any maintenance or support service that Dell provides but is not part of fixed-fee Support Services or other Dell generally available service-related offering using a pre-established fee. Dell charges separately for Labor Hour Services on an hourly rate based upon its approved Contract labor rates basis consistent with the Contract's provisions.

2. INSTALLATION

You must ensure that: (i) the Installation Site meets the specifications for Infrastructure Products including, without limitation, the Equipment's specifications for power and cooling; (ii) the surfaces over which the Equipment will travel at Customer's location between the carrier delivery point and the final location at the Installation Site meet the weight specifications for the Equipment; and (c) Dell has the contact information for a responsible single point of contact at the Installation Site.

3. SUPPORT SERVICES

Dell will provide Support Services to you subject to your compliance with the provisions of these Supplementary Terms and the Agreement.

a. **Scope.** The contents of Support Services for each Infrastructure Product (the **"Support Option"**) are set forth in the Product Notice or the Service Agreements, and unless otherwise indicated in the Product Notice or Service Agreements, consist of: (i) using commercially reasonable efforts to remedy failures of Infrastructure Products to perform substantially in accordance with Dell's applicable Documentation; (ii) providing English-language (or, where available, local language) help line service via telephone or other electronic means; and (iii) enabling you to download Software Releases and Documentation updates that Dell makes generally available at no additional charge to other purchasers of Support Services for the applicable Infrastructure Product. Dell reserves the right to change the scope of Support Services for Infrastructure Products on sixty days' prior written notice.

b. **Additional Support.** Dell reserves the right to charge for Support Services performed outside the time frames of the applicable Support Option as a Labor Hour Service. Except to the extent that Support Services are independent of the Equipment's location, Dell will have no obligation to provide Support Services for Infrastructure Products with respect to Equipment that is outside the Dell Service Area. Support Services do not apply to any Software other than the current and the immediately prior Software Release. Support Services are subject to Dell's then-current "End-of-Service-Life" policy for the respective Infrastructure Product, if applicable. Dell will have no obligation to provide Support Services for Software and problems that cannot be reproduced at Dell's facility

or via remote access to Customer's facility. Support Services do not include the supply of Equipment upgrades, if any, needed to utilize new features or functionality in a Software Release.

c. **Exclusions.** Support Services do not cover a problem that would have been excluded from coverage pursuant to section 8.d ("Warranty Exclusions") had the problem arisen during the warranty period of the affected Infrastructure Product.

d. **Reinstatement of Support.** You may request that Dell reinstate Support Services for an Infrastructure Product for which Support Services have lapsed. Dell may do so at its discretion and reinstatement will be subject to a certification at Dell's then-current Contract labor rates. Once the Infrastructure Product is certified, Support Services will commence when you pay: (i) the charge for the above-described Labor Hour Service; (ii) the amount Dell would have normally charged had Support Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve months of the newly-commenced Support Services.

4. SOFTWARE

Software is subject to the manufacturer's license terms. Some products are provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the product. For Infrastructure Products, the terms of the EMC Corporation end user license agreement approved by GSA and listed on GSA's Approved IT Schedule 70 Agreements dated 4/1/2019 shall apply. With regard to third-party licenses, if any, upon request of the Contracting Officer the terms of such third-party clickwrap or shrinkwrap agreement shall be provided to the Contracting Officer.

5. YOUR RESPONSIBILITIES

a. **Cooperation.** You will: (i) promptly notify Dell when an Infrastructure Product fails and provide Dell with sufficient details so that Dell can reproduce the failure; (ii) allow Dell remote and on-site (when deemed necessary) access to the Infrastructure Product to provide Support Services; and (iii) furnish necessary facilities (which for on-site access means suitable work space, computers, power, light, phone, internet network availability, software, and equipment reasonably required by Dell), information, and assistance required to provide Support Services. Customer will provide Dell with timely access to and use of all Customer proprietary and third party equipment, software and systems required for Dell to perform its obligations under these terms. With respect to all third party hardware or software operated by or on behalf of Customer, Customer warrants that it shall, at no expense to Dell, obtain all consents, licenses and sublicenses necessary for Dell to perform under the Service Agreement(s) and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

b. **Support Contacts.** Unless a specific number of authorized contacts are indicated on the Product Notice or the applicable Service Agreement(s) requires that the Customer be in physical possession of the Equipment at the time a support request is submitted, Customer will designate in writing a reasonable number of authorized contacts, as determined by the parties, who will initially report problems and receive Support Services from Dell. Each Customer representative will be familiar with Customer's requirements and will have the expertise and capabilities necessary to permit Dell to fulfill its obligations. Customer will provide changes to authorized support contacts to Dell in writing.

6. ADDITIONAL SUPPORT SERVICES TERMS

a. **Maintenance Aids and Spare Parts for Equipment.** You authorize Dell to store Maintenance Aids and spare parts at the Installation Site and agree that these items are only for Dell's use. You will not authorize any third party to use these items. Dell is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to you, to enter the Installation Site, or to use remote means to remove or disable Maintenance Aids and spare parts, as applicable. You will reasonably cooperate in this effort.

b. **Customer Support Tools.** Dell may choose to make Customer Support Tools available to assist you in performing various maintenance or support related tasks. You may use Customer Support Tools only in accordance with terms under which Dell makes them available.

c. **Service Data.** In connection with the performance and use of the Support Services, and Dell's remote support capabilities detailed in section 6.h ("**Remote Support Capability**") below, Dell may obtain and receive, data or information, including Infrastructure Product-specific, service-related data such as Infrastructure Product diagnostics, configurations, usage characteristics, performance data, and deployment location (collectively, "**Service Data**"). You explicitly consent to Dell's collection, storage and use of this Service Data. You acknowledge and agree that Dell will: (i) use, compile, display, store, process, reproduce, or create reporting and other services-related materials from the Service Data solely to provide the Support Services, including remotely accessing Infrastructure Products to install, maintain, monitor, support, receive alerts and notifications from and change certain internal system parameters of Infrastructure Products in Customer's environment in fulfillment of Dell's Support Services obligations; (ii) provide Customer with visibility to Customer's actual Infrastructure Product usage and consumption patterns and make recommendations to Customer regarding improvements to Customer's environment and utilization of the Services; (iii) utilize the Service Data in connection with predictive analytics and usage intelligence to consult with and assist Customer to optimize Customer's future planning activities and requirements; (iv) aggregate and use the Service Data in an anonymous manner with that of others in the development and improvement of future products; and (v) copy and maintain the Service Data on Dell's systems as necessary to provide the Support Services. Dell agrees that the Service Data is subject to the confidentiality provisions in the Agreement.

d. **Data Security Options.** You must, at your own cost, permanently erase all information, including without limitation all personally identifiable, confidential, and any other protected or sensitive information placed on Infrastructure Products before returning them to Dell for trade-in, repair, or disposal. You must use a method that does not cause damage to the Infrastructure Products or any replaced parts or any other items that Customer provides to Dell for repair, trade-in, or disposal. Dell offers data erasure services and Dell will provide the descriptions and charges associated with Dell's then current data erasure services upon request. You agree that Dell has no responsibility for any information that you fail to erase that is on items sent to Dell.

e. **Proactive Product Changes.** Dell may, at its expense, implement changes to the Infrastructure Products upon reasonable notice to you: (i) when the changes do not adversely affect interchangeability or performance of the Infrastructure Products; (ii) when Dell reasonably believes the changes are required for purposes of safety or reliability; or (iii) when Dell is required by law to do so. You will give Dell reasonable access to the Infrastructure Products for these purposes.

f. **Software Releases.** When Customer begins using a Software Release for a particular Infrastructure Product, Customer must remove and make no further use of all prior Software Releases for that Infrastructure Product, and protect the prior Software Releases from disclosure or use by any third party. Customer is authorized to retain a copy of each Software Release that the Customer properly obtains for archive purposes and use them as a temporary back-up if the current Software Release becomes inoperable. Customer will use and deploy Software Releases only in accordance with terms of the original license for Software.

g. **Change of Equipment Location or Configuration.** Customer may change the Installation Site or configuration of Equipment under Support Services only after written notice to Dell, and subject to the terms and conditions in this section 6.7. If the new location is in a different country, the move is subject to Dell's prior written approval and additional fees may apply. Customer must promptly notify Dell of any changes to the configuration, or movement of the Equipment by anyone other than Dell. To determine if the Infrastructure Products remain eligible for Support Services, Dell reserves the right to inspect and evaluate the changes in configuration or location of the affected Equipment, and to re-certify the Equipment at Dell's then current Labor Hour rates. Additional charges, if any, related to changes in configuration or location of the Equipment will apply from the date the change took place.

h. **Remote Support Capability.** As part of Support Services, Dell makes various remote support capabilities available for certain products in accordance with its then-current policies and procedures. Dell's warranty and Support Services fees are based on the availability and use of the remote support capabilities. Customer may elect not to activate or to disable remote support capabilities, but must notify Dell of this election without undue delay. If you choose to disable or to not activate the remote support capabilities, then, with regard to all products

affected by this choice: (i) Dell may assess you a surcharge in accordance with Dell's then-current standard rates; and (ii) agreed response times or other agreed service levels (if any) will no longer apply.

i. **Alterations and Attachments to Infrastructure Products.** Dell does not restrict Customer from making alterations to, or installing other products in or with the Equipment at Customer's own expense; provided that Customer is responsible for any inspection fees, additional charges, or both, resulting from such activities. If the alterations or attachments prevent or hinder Dell from performing Support Services, then you shall, upon Dell's request, take corrective action. Your failure to take appropriate corrective action shall be deemed a breach of this Agreement.

j. **Transfer to Secondary Purchasers.** If Customer decides to sell, assign, or otherwise transfer the use, ownership, or both, of Equipment to a "**Secondary Purchaser**" (meaning a bona fide end-user that (1) is not considered, in Dell's reasonable discretion, to be a Dell competitor and (2) has not had prior disputes with Dell), to the extent Dell resources reasonably permit, Dell will make available to you, as a Labor Hour Service, de-installation services. In addition, and to the extent Dell resources reasonably permit, Dell will make available directly or indirectly to the Secondary Purchaser: (a) Equipment installation and re-certification services as a Labor Hour Service; and (b) Support Services for Equipment that Dell has determined and notified the Secondary Purchaser meets Dell's certification criteria upon receipt of payment of Dell's then current Support Services fees. A Secondary Purchaser of Infrastructure Products must obtain, directly or indirectly, the appropriate Software license from Dell and pay any applicable Software license fees.

k. **Software Support Services affected by Change in Equipment Status.** For Software used on or operated in connection with Equipment that ceases to be covered by Support Services or the Dell Equipment warranty, Dell reserves the right to send you a written notice that Dell has either chosen to discontinue or change the price for Support Services for the Software (with the price change effective as of the date the applicable Equipment ceases to be covered). If Dell sends a discontinuation notice, or if you reject or do not respond to the notice of a proposed price change within thirty days after receipt, you will be deemed to have terminated the Software Support Services for convenience and the terms of section 7.3 below will apply.

l. **Third Party Products Provided to Dell.** If you provide or make available third party products, including any intellectual property developed by you, for Dell to use in connection with Services, you will: (a) authorize Dell to use the third party products as needed to provide the Support Services; (b) warrant that you have all consents, licenses, and sublicense rights as may be necessary to make these third party products available to Dell; and (c) agree that Dell is not liable to you if Dell's authorized use causes warranties or other services contracts for these third party products to become void.

m. **Pricing.** The fee for Support Services for Infrastructure Products will be as set forth on the applicable Dell quote or order confirmation. Additions to the Products as specified in the relevant Dell quote or order confirmation may result in additional Support Services fees. Dell will charge and invoice for Labor Hour Service in accordance with terms governing each service engagement.

7. TERM AND TERMINATION

a. **Software Support Services Term.** Independent Software or Software related Support Services that are ordered at the same time as the license for such Independent Software or Software shall commence on the date of shipment of the physical media or electronic availability of the Software and continue for the period specified on the Dell quote or order confirmation. Renewals of such Support Services shall commence and expire in accordance with the dates on the applicable Dell quote or order confirmation.

b. **Equipment Support Services Term.** Support Services (including Support Option upgrades, if applicable) for Equipment are provided during the Equipment warranty period set out in the relevant Product Notice or stated in a Dell quote or order confirmation. Renewals of such Support Services shall commence and expire in accordance with the dates on the applicable Dell quote or order confirmation. Support Services for hardware

upgrades installed into Equipment are coterminous with the Support Services that are then in effect for the Equipment into which such upgrades are installed.

c. **Termination.** These Supplementary Terms may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4(l).

8. INFRASTRUCTURE PRODUCT WARRANTIES, EXCLUSIONS, AND DISCLAIMERS

The following warranties and warranty exclusions and disclaimers apply for Infrastructure Products.

a. **Equipment and Software Media Warranty.** Unless stated otherwise in the Product Notice, Dell warrants that: (i) the Equipment and upgrades installed into that Equipment, when purchased from Dell and operated with normal usage and regular recommended service; and (ii) any physical media for Software, will be free from material defects in materials and workmanship, and will perform substantially in accordance with the applicable Documentation until the expiration of the warranty period stated in the Product Notice or, for SC Series Products, stated in the Dell quote or confirmation. Unless otherwise noted on the Product Notice or the Dell quote or order confirmation, the warranty coverage for the microcode, firmware and operating system software that enables Equipment to perform as described in its Documentation will be no less than that which applies to the applicable Equipment. To the extent specified on the Product Notice and unless stated otherwise in the Dell quote or order confirmation, Support Services in the form of the Support Option noted on the Product Notice are included free of charge during the warranty period for Equipment. In some cases, Dell may offer an upgrade option for Support Services during the Equipment warranty period for separate purchase.

a) **Equipment Warranty Duration.** The warranty period for Equipment is stated on the Product Notice unless the Dell quote or order confirmation provides a different warranty period. The Equipment warranty commences upon Delivery. Upgrades to Equipment are warranted in the same manner as the Equipment in which the upgrades are installed from Delivery of the upgrade until the end of the warranty period for the Equipment into which the upgrades are installed.

b) **Software Media Warranty Duration.** The warranty for any physical media for Software and Independent Software is ninety days and commences upon Delivery.

c) **Equipment and Software Media Warranty Remedies.** If Customer notifies Dell of a warranty claim during the applicable warranty period, then Dell will, at its option, either remedy the non-compliance or replace the affected Equipment with new or refurbished parts at Dell's discretion or applicable Software or Independent Software media. If Dell is unable to repair or replace the affected Equipment or media within a reasonable time, then Customer will return the Equipment or media to Dell, and Dell will provide to Customer a refund of the amount Dell received for the affected Equipment or media as depreciated on a straight line basis over a five year period. You must return to Dell the applicable defective Equipment or media, or portions of those items, and those items become Dell's property. If Customer receives a replacement but does not return the defective item to Dell, then Customer must pay Dell's then-current spare parts price for the replacement item. Dell has no liability under these warranty terms for defects in Equipment and media after expiration of the applicable warranty period. This subsection 8.1(C) states Dell's entire liability and Customer's exclusive remedies under warranties for the Equipment and Software and Independent Software media described in section 8.1.

b. **Independent Software Warranty, Duration, and Remedy.** Dell warrants that the Independent Software will, for ninety days following Delivery ("**Independent Software Warranty Period**"), substantially conform to the applicable Documentation. This limited warranty is not transferable. Customer must report errors to Dell during the Independent Software Warranty Period to invoke this warranty. In response to Customer's error notice, Dell will, at its own expense, either replace that Independent Software or correct any reproducible error. If Dell determines that it is reasonably unable to correct the error or replace the Independent Software, Dell will refund to you the amount you have paid for that Independent Software, and Customer's license for that Independent Software will terminate. This section 8.2 states Dell's sole obligation and your exclusive remedy under the Independent Software warranty. This disclaimer of warranty may not be valid in some jurisdictions, and Customer

may have warranty rights under law which may not be waived or disclaimed. Any law-based warranty extends only for thirty days from the date of Delivery (unless local law provides a different duration).

c. **Infrastructure Product Support Services Warranty and Remedy.** Dell will perform the labor portion of Support Services for Infrastructure Products in a workmanlike manner in accordance with generally accepted industry standards. Customer will notify Dell of any failure to perform as soon as reasonably possible, and in no event more than ten (10) days after the date on which such failure first occurs. A replacement part receives the remainder of the warranty or Support Services coverage applicable to the Infrastructure Product containing the replacement part. Customer's exclusive remedy and Dell's entire liability to Customer for Infrastructure Product Support Services shall be for Dell to, at its option, (1) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time, or (b) replace any replacement parts which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty (60) days after installation thereof, whichever occurs later; and (2) if, after reasonable efforts, Dell is not able to correct such deficiencies, then Customer may terminate in accordance with section 7.c above.

d. **Warranty Exclusions.** The warranties in this section 8 do not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Infrastructure Product is used or other causes beyond Dell's control; (iii) installation, operation or use not in accordance with Dell's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Infrastructure Product was not designed; (v) modification, alteration or repair by anyone other than Dell or its authorized representatives; or (vi) in case of Equipment only, causes attributable to normal wear and tear. Dell has no obligation whatsoever for (1) Software or Independent Software installed or used beyond the licensed use, (2) Equipment which was moved from the Installation Site without Dell's consent, (3) Infrastructure Product whose original identification marks have been altered or removed, or (4) any Software or Independent Software for which payment has not been received. Infrastructure Products and Dell Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Infrastructure Products or Dell Services could lead directly to death, personal injury, or physical or property damage (collectively, "High-Risk Activities"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

e. **Warranty Disclaimer.** Other than the warranties set forth in this section 8, and to the maximum extent permitted by applicable law, Dell and its affiliates, and their providers/suppliers: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade.

9. EQUIPMENT REPLACEMENTS

All replaced Equipment (or portions of Equipment) from any Infrastructure Products will become Dell's property upon Customer's receipt of the corresponding replacement. Customer must return the replaced Equipment (or portions of Equipment) promptly upon Supplier's request. If Customer does not return the replaced Equipment or replaced portions within fifteen days after receipt of Supplier's request, then Customer must pay Supplier's then-current spar